

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

No. 16,066

FILED DEC 27 1966

431

Joseph W. Stinson

CLERK

AETNA CASUALTY AND SURETY COMPANY,

Appellant,

v.

HARRY CLIFFORD PORTER,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN L. LASKEY

509 Albee Building
Washington, D. C.

Attorney for Appellant

(i)

THE QUESTION PRESENTED

When the Committee of an incompetent veteran uses disability benefits payable to the veteran for the purchase of shares in savings institutions specifically approved by the Courts for the "investment" of trust funds, are the resulting share interests "investments", in the legal sense, and, thus, not exempt from attachment by a judgment creditor of the incompetent?

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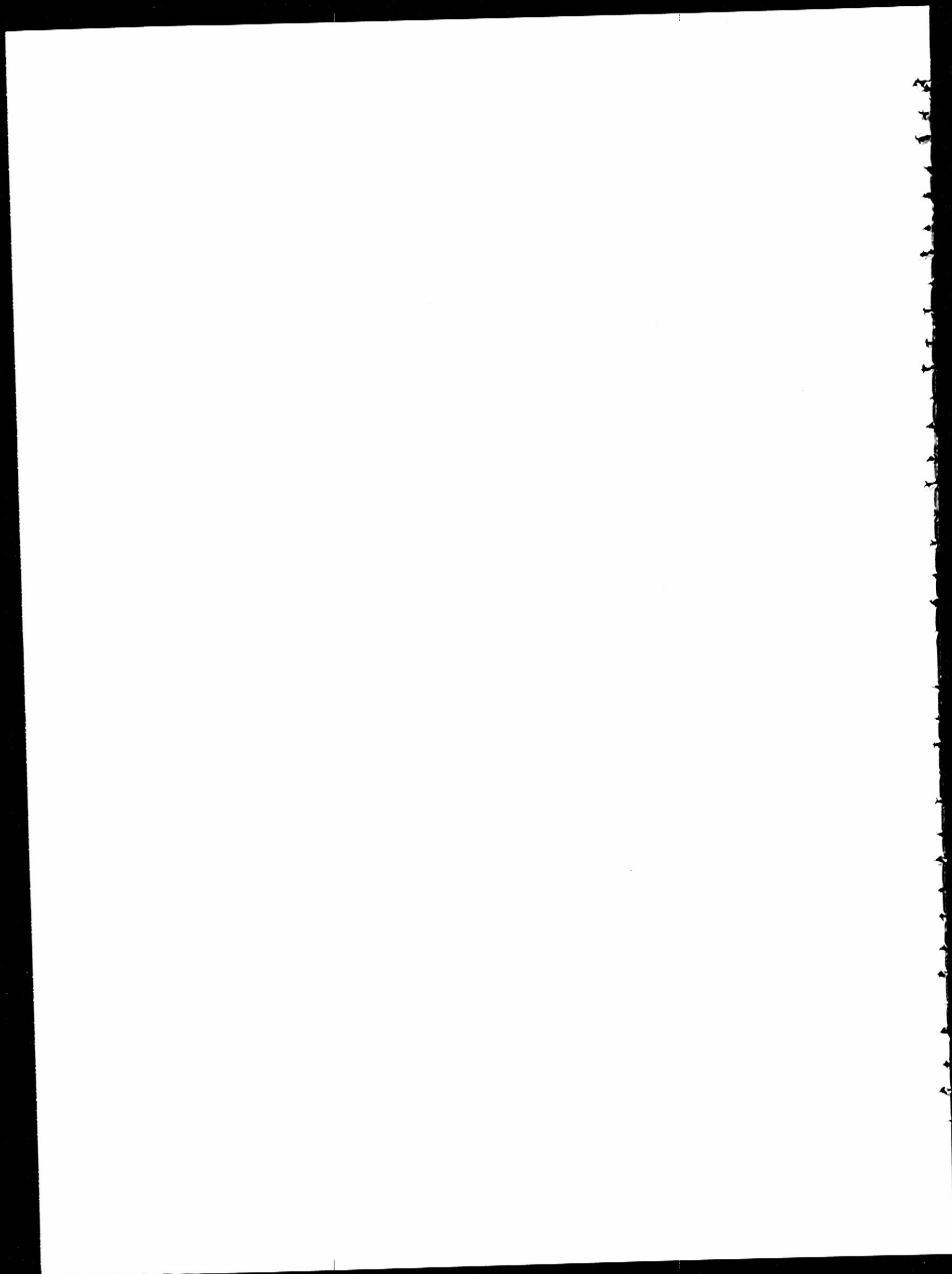
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UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 16,066

AETNA CASUALTY AND SURETY COMPANY,

Appellant,

v.

HARRY CLIFFORD PORTER,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from an Order of the United States District Court for the District of Columbia, Luther W. Youngdahl, J., granting, in pari materia, the Appellee's motions to quash certain attachments issued by the Appellant. Jurisdiction here is predicated upon the Act of June 25, 1948, c. 646, 62 Stat. 929, 28 U.S.C.A. Sec. 1291.

STATEMENT OF THE CASE

This proceeding is collateral to the matter entitled Kendall, Administratrix v. Gore Properties, Inc., et al., which was decided by this Court on June 14, 1956, and is reported at 98 U.S. App. D.C. 378, 236 F. 2d 673. It arises as follows.

Gore Properties, Inc., a corporation engaged in the real estate business in the District of Columbia, employed one William F. Hickey as resident manager of the Ritz Apartments, one of its projects. In the summer of 1952, Hickey hired a certain Harry Clifford Porter, a non-commissioned officer in the United States Air Force, to paint the interiors of several apartment units in the development. The manager knew nothing about the service-man, other than having seen him in military uniform, and made no investigation whatsoever into his background or character. He put Porter to work painting the apartment of one of the tenants, Miss Codie A. Whitman, a young lady who lived alone. Porter murdered Miss Whitman. He was subsequently indicted, but was adjudicated insane and committed to Saint Elizabeth's Hospital; his later trial resulted in a verdict of not guilty by reason of insanity.

After the murder, Miss Whitman's Administratrix brought a wrongful death action against Gore, its manager, Hickey, and the American Security and Trust Company, Gore's collection agent, alleging that the Defendants were negligent in hiring Porter without any investigation into his background or character, and in failing to properly supervise and control him. At the conclusion of the Plaintiff's case, the trial court directed verdicts in favor of all Defendants, and the Plaintiff appealed. This Court reversed and remanded, as to the Defendants Gore and Hickey.

The defense of the wrongful death action had been undertaken by Aetna Casualty and Surety Company, under the provisions of a policy of liability insurance which had been issued by Aetna to Gore. Upon

remand, Counsel for Aetna effected a settlement of the suit, and the company paid the settlement amount.

In due course, Aetna, via the subrogation provisions of the policy which it had issued to Gore, brought an indemnity action against Porter to recover the moneys paid out under the policy on behalf of Gore. This resulted in a judgment in favor of Aetna against Porter.¹

Porter, the judgment debtor, was represented throughout all of the proceedings referred to (including this appeal) by Ethelbert B. Frey, Esq., of the District of Columbia Bar, who was appointed Committee for Porter. In this capacity, Mr. Frey received from the Veterans Administration, from time to time, various sums of money representing disability benefits payable to Porter by virtue of his military status.

Some of these moneys were deposited by the Committee in an ordinary checking account (i.e., an account which bore no interest and was subject to withdrawal on demand) in the First National Bank of Washington. This checking account was used by the Committee to pay the ordinary and usual expenses incident to Porter's maintenance and upkeep. Other sums, however, were invested by the Committee in the Columbia Federal Savings and Loan Association and The Prudential Building Association, both also of Washington, pursuant to Rule 23 of the Rules of the United States District Court for the District of Columbia, which specifically authorizes the "investment" of trust funds in institutions of this character. The moneys so invested in these institutions were converted into share interests, which earned dividends and were not subject to withdrawal on demand except at the pleasure of the institutions.

After obtaining its indemnity judgment against Porter, Aetna issued attachments, and motions for judgments of condemnation, against the moneys deposited in the checking account in the First National Bank, and the share or investments interests in Columbia

¹ An appeal by Porter from this judgment was dismissed by this Court on October 11, 1960, as "frivolous".

Federal and The Prudential. The Committee responded with motions to quash which, after hearing, were granted by the District Court, except as to the interest increments attached to the accounts in Columbia Federal and The Prudential. From this Order, Aetna appeals, as to the action of Judge Youngdahl in quashing the attachments laid against the corpus of the investment accounts in the two savings institutions.

SUMMARY OF ARGUMENT

In providing for the payment of disability benefits to qualified veterans, Congress also provided that, to some extent, such benefits should be exempt from the claims of creditors. The judicial history of the exemption statute has made it abundantly clear that the exemption is not absolute, and that, particularly, it was not designed to extend to investments purchased with the benefits by or on behalf of the veteran.

Thus, the Supreme Court has ruled that the exemption does not extend to land purchased with the benefits (McIntosh v. Aubrey, 185 U.S. 122, 46 L. ed. 834, 22 S. Ct. 561, and Trotter v. Tennessee, 290 U.S. 354, 78 L. ed. 358, 54 S. Ct. 138, nor to negotiable notes and United States bonds so purchased (Carrier v. Bryant, 306 U.S. 545, 83 L. ed. 976, 59 S. Ct. 707). With regard to cash in bank, the Court has held that cash on deposit in an ordinary checking account subject to withdrawal on demand is exempt, although the Court was careful to point out that cash on deposit could, under certain circumstances, "assume the character of investments" (Lawrence v. Shaw, 300 U.S. 245, 81 L. ed. 623, 57 S. Ct. 443, 108 A.L.R. 1102).

As a result of the pertinent decisions of the Supreme Court, it has uniformly been held that cash on deposit in an ordinary checking account is exempt (Williams v. United States Fidelity & Guaranty Co., 71 App. D.C. 9, 107 F. 2d 210; cf. District of Columbia v. Reilly, 102 U.S. App. D.C. 9, 249 F. 2d 524; Surplus v. Remmele, 87 N.Y.S. 2d 651,

194 Misc. 1036; Elbert Sales Co. v. Granite City Bank, 192 S.E. 66, 55 Ga. App. 835; Speer v. Pierce, 77 S.W. 2d 77, 18 Tenn. App. 351), but that shares in savings institutions purchased with the benefits are investments and not exempt from execution (In re Bowen, 49 N.E. 2d 753, 141 Ohio St. 602 (tort judgment); Hale v. Gravalles, 166 N.E. 2d 557, Mass., 1960).

It necessarily follows, on controlling authority, that the investment shares purchased by the Committee at bar in the two savings institutions, which shares are income-producing and not subject to withdrawal on demand except at the pleasure of the institutions, are "investments" in the legal sense and, hence, not exempt from attachment by a judgment creditor of the veteran.

ARGUMENT

The exemption statute, 38 U.S.C.A. Sec. 3101, in pertinent part, is as follows:

"Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. * * *²

In Trotter v. Tennessee, 290 U.S. 354, 78 L. ed. 358, 54 S. Ct. 138 (as in McIntosh v. Aubrey, 185 U.S. 122, 46 L. ed. 834, 22 S. Ct.

² This is, essentially, the form in which the statute has been since its original enactment; the phrase "either before or after receipt by the beneficiary" was added by the amendment of 1935, Act of August 12, 1935, Secs. 3 and 5, 49 Stat. at L. 607, 609, chap. 510, 38 U.S.C.A. Sec. 454a.

561), the Court held that land purchased with the benefits was not exempt from execution. In making it clear that the exemption was not designed to extend to investments, the Court, speaking through Mr. Justice Cardozo, said that:

"We see no token of a purpose to extend * * * immunity to permanent investments or the fruits of business enterprise."

Next came the decision in Lawrence v. Shaw, 300 U.S. 245, 81 L. ed. 623, 57 S. Ct. 443, 108 A.L.R. 1102. There, it appeared that the veteran's guardian had merely deposited the periodic government checks or warrants in an ordinary checking account, which drew no interest and was subject to withdrawal on demand. It was stipulated that the funds in bank were "uninvested balances" of the government payments. In holding that funds so employed were immune, the Court, speaking through Mr. Chief Justice Hughes, said that:

"The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the Trotter case. It is of course true that deposits in bank may be made under a special agreement by which the deposits assume the character of investments and would lose immunity accordingly. No such agreement is shown here. Nor are the bank balances shown to be the proceeds of investments. They are stipulated to be 'uninvested balances' of the government payments. Some reference was made at the bar to the possible effect of an allowance of interest upon bank deposits. It does not appear that there was such an allowance in this instance and we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach. We hold that the immunity from taxation does attach to bank credits of the veteran or his guardian which do not represent or flow from his investments but result from the deposit of the warrants or checks received from the Government when such deposits are made in the ordinary manner so that the proceeds of the collection are subject to draft upon demand for the veteran's use. In order to carry out the intent of the statute, the avails of the government warrants or checks must be deemed exempt until they are expended or invested."

The most recent pronouncement of the Supreme Court is Carrier v. Bryant, 306 U.S. 545, 83 L. ed. 976, 59 S. Ct. 707 (1939). There, the Supreme Court of North Carolina had ruled that negotiable notes and United States bonds which had been purchased with the benefits were not exempt from attachment by a judgment creditor of the incompetent. The Supreme Court, speaking through Mr. Justice McReynolds, affirmed, relying squarely on its previous adjudications (i.e., McIntosh v. Aubrey, Trotter v. Tennessee, and Lawrence v. Shaw, supra).

The State courts have been consistent in following the clear thrust of the Supreme Court's decisions. An excellent recent example is In re Bowen, 141 Ohio St. 602, 49 N.E. 2d 753 (1943). There, a creditor sought to enforce a judgment (based on a tort) against the incompetent's guardian. The Supreme Court of Ohio, affirming a judgment of the Court of Appeals holding that although funds on deposit in an ordinary checking account were exempt, real estate and a savings account were investments and subject to seizure, said that:

"From these decisions [Trotter, Lawrence, and Carrier] of the highest federal court interpreting federal law, it is clear that in the case at bar the checking account in the bank is exempt from the payment of [the judgment creditor's] claim, but that the real estate is not. The inquiry remains as to whether the savings account at interest should be classed as an investment amenable to the demand of the judgment creditor.

"An 'investment' as that word is commonly used and understood is the placing of capital or laying out of money in a way intended to secure income or profit from its employment [citing cases]. And under Section 10506-41, General Code, the deposit of funds by a fiduciary in a savings account in a national bank located in the State of Ohio or a state bank located in and organized under the laws of the State of Ohio is classed as an investment.

"It is therefore our conclusion that both the real estate and the savings account of the ward are subject to the satisfaction of [the judgment creditor's] judgment, and that the judgment of the Court of Appeals should stand affirmed."

It is quite pertinent to note that the accounts opened in the two savings institutions by the Committee at bar are specifically authorized by the provisions of our District Court Rule 23, and by it classified as "investments". That Rule, which is entitled "Investment of Trust Funds", provides that:

"Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the Court, will ordinarily be sanctioned only when made in the obligations meeting the following requirements:

"Section II-a. Federal Savings and Loan Associations, Building and Loan Associations, and Savings and Loan Associations. Investment shares, certificates and deposit accounts in said institutions not exceeding \$10,000.00 in one institution, provided such institution is located and doing business in the District of Columbia and its accounts are insured by the Federal Savings and Loan Insurance Corporation under the provisions of Subchapter IV, Title 12 of the United States Code."

The two institutions here concerned (Columbia Federal Savings and Loan Association and The Prudential Building Association) are obviously fully qualified under Rule 23. "Investment", in the full legal sense, is the manifest purpose of the purchase of shares in these institutions, since the shares or accounts earn dividends at stated intervals. It is also quite significant to note that, under the rules and regulations of Columbia Federal and The Prudential, these two institutions are not obligated to permit withdrawal on demand; on the contrary, the obligation incumbent on each institution is to honor withdrawal requests within thirty days thereof. (JA 34, 37). These two factors give to the accounts in these institutions a legal characterization entirely and substantively distinct and different from an ordinary checking account such as, for example, the account opened by the Committee at bar in the First National Bank of Washington.

The most recent decision in point is an interesting proceeding emanating from the Supreme Judicial Court of Massachusetts. This is

Hale v. Gravalles, which first came before the Massachusetts Court in 1959, and is reported at 162 N.E. 2d 817. It took the form of a petition by an attorney, addressed to the appropriate Probate Court, for a determination of the amount of compensation due the petitioner for services rendered to an incompetent. The guardian resisted the petition, and was joined in this opposition by the administrator of veterans' affairs of the United States Veterans' Administration. The lower court awarded the petitioner certain fees and expenses, and the guardian and the administrator of veterans' affairs appealed. The Supreme Judicial Court affirmed the award (adjusting the amount), and then turned to the matter of payment. The Court said:

"But in this case the appellants contend that under 38 U.S.C. (1952) Sec. 454a (now Sec. 3101), the funds of the ward held by the guardian are exempt 'from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary'.

"Before ordering payment from the estate it must first be determined whether the funds therein are exempt. It is generally held that the exempt status of pensions after receipt by a beneficiary or his guardian is lost where the proceeds are invested in another form. Carrier v. Bryant, 306 U.S. 545, 59 S. Ct. 707, 83 L. ed. 976; McCurry v. Peek, 54 Ga. App. 341, 187 S.E. 854; In re Bowen, 141 Ohio St. 602, 49 N.E. 2d 753; In re Guardianship of Letourneau, 238 Wis. 473, 300 N.W. 248.

"In order to obtain the requisite facts bearing on the claimed exemption and that the appropriate decree may be entered we retain the case and direct the judge to report the facts as to the present nature and form of the corpus of the guardianship estate, taking further evidence if necessary."

These directions were followed by the nisi court, and in 1960 the case came back before the Supreme Judicial Court, and will be found at 166 N.E. 2d 557 (decided April 28, 1960). The Court said:

"This case was previously before us. * * * We retained it * * * to obtain from the trial judge findings as

to the nature and form of the corpus of the estate held by the guardian in order to determine what part, if any, of the estate is exempt from the claim of the petitioner under 38 U.S.C. (1952), Sec. 454a (now 38 U.S.C.A. Sec. 3101). * * *

"The judge of the Probate Court now reports that it has been the custom of the present and prior guardians to cash the checks received from the Veterans' Administration for a veteran's disability pension, and, after paying outstanding bills of the ward, to deposit the balance of cash in the East Boston Savings Bank in the name of the guardian. From time to time the guardian would withdraw substantial sums from this account and invest the amounts withdrawn in United States Series E savings bonds. On January 13, 1959, when the case was heard in the Probate Court the estate of the ward consisted of such savings bonds totalling \$13,500 and a deposit in the savings bank of \$6,405.02. * * *

"In view of these findings we are of opinion that neither the savings bonds nor the savings account is exempt from being applied by the guardian in satisfaction of the petitioner's claim. The exemption of a veteran's disability pension does not extend to property in which the pension payments are invested after receipt. Carrier v. Bryant, 306 U.S. 545, 55 S. Ct. 707, 83 L. ed. 976."

CONCLUSION

It is respectfully submitted that the view so clearly enunciated by the Supreme Judicial Court of Massachusetts in Hale v. Gravalles, supra, is sound, and is based upon the clear import of the controlling decisions of the Supreme Court of the United States.

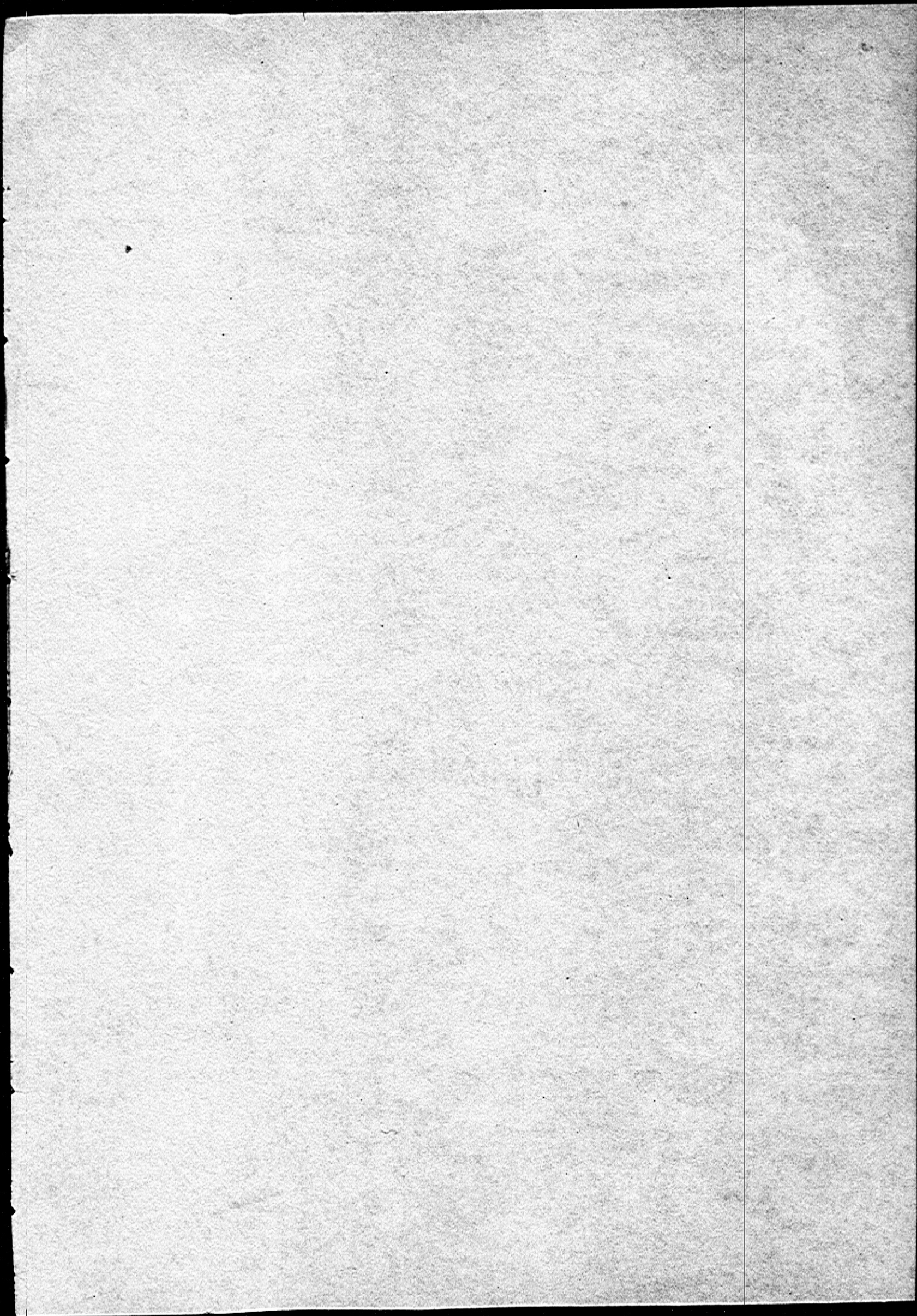
Accordingly, it is submitted that the District Judge erred in quashing Appellant's attachments issued against the corpus of the investments made by the Committee at bar in Columbia Federal Savings and Loan Association and The Prudential Building Association, and that this Court should reverse and remand, with directions that the motion to quash the attachments be dismissed and the motions for judgments of condemnation be granted.

Respectfully submitted,

JOHN L. LASKEY

Laskey & Laskey
509 Albee Building
Washington, D. C.

Attorney for Appellant



(i)

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JOINT APPENDIX

[Filed February 8, 1960]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AETNA CASUALTY AND SURETY COMPANY,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. 57-57
	)	
HARRY CLIFFORD PORTER,	)	
	)	
Defendant	)	

JUDGMENT

This cause coming on for trial before the Court without a jury on November 18, 1959, and the Court having heard the testimony, examined the proofs offered by the respective parties, considered the arguments of counsel, and having made its Findings of Fact and Conclusions of Law, it is by the Court this 8th day of February, 1960

ADJUDGED, ORDERED AND DECREED that the plaintiff recover of the defendant the sum of \$16,459.72, together with its costs herein.

/s/ Edward A. Tamm
JUDGE

[Filed March 1, 1960]

ATTACHMENT ON JUDGMENT

The President of the United States, to the Marshal for said District—
GREETING:

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant, if to be found in this District, of value sufficient to satisfy the plaintiff judgment against the defendant in this

Court in the above-entitled cause, on the 8th day of February, 1960, for \$16,459.72 with interest from February 8, 1960, for money payable to the plaintiff by the defendant, and \$40.00 for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

WITNESS, The Honorable Chief Judge of said
Court the 24th day of Feb., 1960

HARRY M. HULL, Clerk

By /s/ Robert C. Huey
Deputy Clerk

[Seal]

NOTICE

February 24, 1960

To: Columbia Federal Building Association
730 - 11th St., N.W., Washington, D. C., Garnishee

YOU ARE HEREBY NOTIFIED that any property or credits of
Harry Clifford Porter, ~~or his Committee, Ethelbert B. Frey, Esq./s/JLL~~
in your hands are seized by virtue of the foregoing writ of attachment,
and you are hereby warned to appear in said Court, on or before the
tenth day after service hereof, and show cause, if any there be, why the
property or credits so attached should not be condemned and execution
thereof had, unless the credits hereby attached are wages as defined by
Public Law 130, signed August 4, 1959, in which event you are admonished

to comply with the terms of that Law. A copy of the referred to Law may be obtained from the Clerk of this Court upon request.

U.S. Marshal.

MARSHAL'S RETURN

Attached credits in the hands of J. Anderson
and served with copies of this Writ, Interrogatories, and Notices as
Garnishee of Defendant

Laskey & Laskey
by /s/ John L. Laskey
Plaintiff's Attorney

U.S. Marshal in and for the
District of Columbia

[Filed March 2, 1960]

ATTACHMENT ON JUDGMENT

The President of the United States, to the Marshal for said District—
GREETING:

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant, if to be found in this District, of value sufficient to satisfy the plaintiff judgment against the defendant in this Court in the above-entitled cause, on the 8th day of February, 1960, for \$16,459.72 with interest from February 9, 1960, for money payable to the plaintiff by the defendant, and \$40.00 for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels, or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same

should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

WITNESS, The Honorable Chief Judge of said Court
the 24th day of Feb., 1960

HARRY M. HULL, Clerk

By /s/ Robert C. Huey
Deputy Clerk.

NOTICE

February 24, 1960

To Ethelbert B. Frey, Esq., Committee of Harry Clifford
Porter, 1319 F St., N.W., Washington, D. C., Garnishee

YOU ARE HEREBY NOTIFIED that any property or credits of Harry Clifford Porter in your hands are seized by virtue of the foregoing writ of attachment, and you are hereby warned to appear in said Court, on or before the tenth day after service hereof, and show cause, if any there be, why the property or credits so attached should not be condemned and execution thereof had, unless the credits hereby attached are wages as defined by Public Law 130, signed August 4, 1959, in which event you are admonished to comply with the terms of that Law. A copy of the referred to Law may be obtained from the Clerk of this Court upon request.

U. S. Marshal

*

*

*

*

*

[Filed March 1, 1960]

ATTACHMENT ON JUDGMENT

The President of the United States, to the Marshal for said District—
GREETING:

YOU ARE HEREBY COMMANDED to attach the goods, chattels, and credits of the defendant, if to be found in this District, of value sufficient to satisfy the plaintiff judgment against the defendant in this Court in the above-entitled cause, on the 8th day of February, 1960, for \$16,459.72 with interest from February 9, 1960 for money payable to the plaintiff by the defendant, and \$40.00 for costs; and the same so attached, safely keep and have before said Court, on or before the tenth day occurring after the execution of this writ, that the same may be condemned unless sufficient cause be shown to the contrary; and, if said goods, chattels, or credits be attached in the hands or possession of any person or persons other than the defendant, notify such person or persons of such seizure, and warn him or them to appear before said Court, within the time aforesaid, to show cause why the same should not be condemned and execution thereof had according to law, unless the credits so attached are wages as defined by Public Law 130, signed August 4, 1959, in which event the terms of the said Law must be observed. And have then there this writ, so endorsed as to show when and how you have executed it.

WITNESS, The Honorable Chief Judge of said Court
the 24th day of Feb., 1960

HARRY M. HULL, Clerk

By /s/ Robert C. Huey

Deputy Clerk.

NOTICE

February 24, 1960

To Prudential Building Association
1308 G St., N. W., Washington, D. C., Garnishee

YOU ARE HEREBY NOTIFIED that any property or credits of

Harry Clifford Porter, or his Committee, Ethelbert B. Frey, Esq. -/s/JLL
 in your hands are seized by virtue of the foregoing writ of attachment,
 and you are hereby warned to appear in said Court, on or before the
 tenth day after service hereof, and show cause, if any there be, why the
 property or credits so attached should not be condemned and execution
 thereof had, unless the credits hereby attached are wages as defined by
 Public Law 130, signed August 4, 1959, in which event you are admon-
 ished to comply with the terms of that Law. A copy of the referred to
 Law may be obtained from the Clerk of this Court upon request.

U. S. Marshal

* * * * *

[Filed March 1, 1960]

INTERROGATORIES IN ATTACHMENT
 NOTICE

To Columbia Federal Building Association
 730 - 11th St., N. W., Washington, D. C., Garnishee

You are required to answer the following interrogatories, under
Penalties of Perjury within ten days after service hereof. And should
 you neglect or refuse so to do, judgment may be entered against you for
 an amount sufficient to pay the plaintiff's claim, with interest and costs
 of suit.

LASKEY and LASKEY

By /s/ John L. Laskey
 Attorney for Plaintiff

INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment,
 served herewith, or have you been, between the time of such service and
 the filing of your answer to this interrogatory, indebted to the defendant?^{1/}

1/ Or to the defendant's Committee, Ethelbert B. Frey, Esq.

If so, how, and in what amount?

ANSWER: Not to defendant individually, but see Interrogatory answers "2nd" and "3rd" below and Thermofax attachments.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant^{1/} in your possession or charge? If so, what?

ANSWER: Savings Account-Ethelbert B. Frey, Comm. Est. Harry C. Porter, Account No. 31337

3rd. List the dates and amounts of each deposit by the defendant, or his committee, Ethelbert B. Frey, from the date of opening of the account or accounts, and especially the account associated with Book No. 31337, Account opened 5-11-55, amt. \$3,000.00., 1-6-56 and 12-6-56 deposit of \$1,000.00 each- Balance this date, 2-25-60, \$5,791.20 incl. dividends.

1/ Or to the defendant's Committee, Ethelbert B. Frey, Esq.

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this 25th day of February, A.D. 1960

Columbia Federal Savings and Loan Association

/s/ T. W. Blumenaner, Jr., Senior Vice President

[Filed March 1, 1960]

EXHIBIT

Account No. 31337

NAME <u>Mr. Ethelbert B. Frey Committee for the</u>					Bonus Long		
Estate of Harry C. Porter					Bonus Short		
ADDRESS <u>1319 F Street, N. W., D. C.</u>					Rate		
Share Loan Amount					Monthly Pmt.		
Date Loan Made							
Date Loan Paid							
Share Payments		Memo.	Repurchases		Date	Balance	
Div. Memo.	Amount		Div. Memo.	Amount		Div. Memo.	Amount
7.50	3,000.00				May 11'55	7.50	3,000.00
					Jun 30'55	45.11	3,007.50
					Dec 31'55	53.41	3,052.61
17.50	1,000.00				Jan 6'56	70.91	4,052.61
					Jun 30'56	72.15	4,123.52
2.92	1,000.00				Dec 6'56	75.07	5,123.52
	75.07				Dec 31'56	90.97	5,198.59
	90.97				Jun 28'57	92.56	5,289.56
	92.56				Dec 31'57	94.19	5,382.12
	94.19				Jun 30'58	95.83	5,476.31
	95.83				Dec 31'58	48.76	5,572.14
	48.76				Mar 31'59	56.20	5,620.90
	56.20				Jun 30'59	56.77	5,677.10
	56.77				Sep 30'59	57.33	5,733.87
	57.33				Dec 31'59	57.91	5,791.20

SIGNATURE _____

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION
Washington, D. C.

FREY, Ethelbert B.-Committee
INDIVIDUAL TRUST ACCOUNT - ADULT Account No. 31337

(1) Ethelbert B. Frey Committee for Harry C. Porter (illegible)
(2) _____ Beneficiary
(To Be Typed)

I am an American citizen and
I hereby apply for a SAVINGS account in the

Columbia Federal Savings and Loan Association, Washington, D. C.

A specimen of my signature is shown below and the association is hereby authorized to act without further inquiry in accordance with writings bearing such signature.

Signature of Trustee /s/ Ethelbert B. Frey

Street Address 1319 F Street, N. W.

City and State Washington, D. C. Telephone No. _____

Committee Harry C. Porter Beneficiary
As Trustee For

As specified in trust agreement on reverse side hereof.

Dated this 11th day of May, 19 55

(over)

[Filed March 2, 1960]

INTERROGATORIES IN ATTACHMENT
NOTICE

To Prudential Building Association
1308 G St., N. W., Washington, D. C., Garnishee:

You are required to answer the following interrogatories, under Penalties of Perjury within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.

LASKEY and LASKEY

By /s/ John L. Laskey
Attorney for Plaintiff.

INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant?^{1/} If so, how, and in what amount?

ANSWER: Yes, we have a Savings account, No. 18215, in the name of Ethelbert G. Frey, Committee for Harry C. Porter in which the present balance is \$3,078.63.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or credits of the defendant^{1/} in your possession or charge? If so, what?

ANSWER: No, except as reported above.

3rd. List the dates and amounts of each deposit by the defendant, or his Committee, Ethelbert B. Frey, Esq., from the date of opening of the account or accounts, and especially the account associated with Book No. 18215.

Above Account opened March 3, 1959 with deposit of \$3,000.00. Dividends have been credited periodically and additional deposit of \$2,000.00 was made on January 11, 1960. One withdrawal was made

of \$2,000.00 - on October 21, 1959.

1/ Or to the defendant's Committee, Ethelbert B. Frey, Esq.

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

/s/ Richard N. Shanbarker

Signed this 1st day of March A.D. 1960.

/s/ Flora Hock

[Filed March 2, 1960]

INTERROGATORIES IN ATTACHMENT
NOTICE

To Ethelbert B. Frey, Esq., Committee of Harry Clifford Porter
1319 F St., N.W., Washington, D. C., Garnishee

You are required to answer the following interrogatories, under Penalties of Perjury within ten days after service hereof. And should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the plaintiff's claim, with interest and costs of suit.

LASKEY and LASKEY

By /s/ John L. Laskey
Attorney for Plaintiff

INTERROGATORIES

1st. Were you at the time of the service of the writ of attachment, served herewith, or have you been, between the time of such service and the filing of your answer to this interrogatory, indebted to the defendant? If so, how, and in what amount?

ANSWER: I am not personally indebted to the defendant, but as an officer of this Court, hold certain funds as answered in question two.

2nd. Had you, at the time of the service of the writ of attachment, served herewith, or have you had, between the time of such service and the filing of your answer to this interrogatory, any goods, chattels, or

credits of the defendant in your possession or charge? If so, what?
Where Located?

ANSWER: As committee of the defendant and officer of the Court, I have on deposit in the First National Bank, 1313 G St., N.W., \$2,266.61; a deposit in the Columbia Federal Building Association, 11th. St. N.W. of \$5,791.20, and a deposit in the Prudential Bldg. Association, in the 1300 block of G St., N.W., \$3,078.63, upon which are the following [liens]. One of \$345.00, which is an over-payment of benefits from the Veterans Administration, which they ask to be returned to them, and an attorney's fee of \$2000.00, due attorney for said Harry Clifford Porter.

I understand that under Public Law 86-146 recently enacted, that payments heretofore received by said Harry Clifford Porter, have been stopped, effective as of December 14, 1959, thus the request for the refund. (As per letters received by me from the Veterans Administration and dated February 15, 1960).

I declare under the penalties of perjury that the answers to the above interrogatories are, to the best of my knowledge and belief, true and correct as to every material matter.

Signed this 1st day of March A.D. 1960.

/s/ Ethelbert B. Frey, Committee
and Attorney

[Filed March 1, 1960]

**MOTION TO QUASH ATTACHMENT ISSUED BY
PLAINTIFF IN THE ABOVE ENTITLED CAUSE.**

Now comes Ethelbert B. Frey, committee and attorney for the said Harry Clifford Porter, defendant, who is a patient at Saint Elizabeths Hospital, Washington, D. C., and moves this Honorable Court to quash the writ of attachment filed herein on the judgment obtained in the above-entitled cause and issued against him as committee of Harry Clifford Porter for the following reasons:

First: That the committee has no control over the funds, whatsoever, as he is only the agent and representative of this Honorable Court, who

has control and custody of the funds of the said Harry Clifford Forter, an ex-service man, to whom money was paid and received by him for his disability connected with his military service, and as such, said funds cannot be attached by the plaintiff or anyone else.

Second: That under the Act of Congress in 1935 and setforth clearly in the United States Code, article 38-3101, page 135 and section 454 A, the benefits received by a veteran are unattachable.

WHEREFORE, having fully setforth the facts and laws in the matter, attached hereto and made part hereof, committee and attorney for said patient, Harry Clifford Porter, patient being in Saint Elizabeths Hospital, asks this Honorable Court to quash the attachment filed herein.

And for such other and further relief as to this Honorable Court may seem fit and proper.

/s/ Ethelbert B. Frey,
Committee and Attorney for
Harry Clifford Porter, patient

*

*

*

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*

[Filed March 11, 1960]

EXHIBIT A TO OPPOSITION OF PLAINTIFF TO MOTION
TO QUASH ATTACHMENT

[Filed Feb. 8, 1960]

Ex. A.

Report Under Rule 22

United States District Court for the District of Columbia

In Re: Harry Clifford Porter
(Patient)

Mental Health No. 1714-52

ANNUAL REPORT UNDER RULE 22

(See copy of paragraph (a) of Rule, on back of this form)

The report of Ethelbert B. Frey, Committee, who qualified as committee on the 22nd. day of December, 1952, respectfully shows that the estate consists of the following:

REAL ESTATE	
Location and Description	Value
None	

BANK DEPOSITS AND OTHER MONEY Total, \$

Account No.	Amount	Deposited in —	In name of—
Jan. 30, 1960, have on deposit with Col. Federal Bldg. Asso. Book #31337,	\$5,791.20	Columbia Federal Bldg. Association 730 - 11th. St., N.W.	Ethelbert B. Frey, Committee
Jan. 30, 1960, have on deposit with Prudential Bldg. Asso. Book #18215	\$3,078.63	Prudential Bldg. Asso. 1308 G St., N.W.	Ethelbert B. Frey, Committee
Jan. 30, 1960, have on deposit; First Nat. Bk	2,041.61	First Nat.Bk. formerly 2nd. 1313 G St., N.W.	Ethelbert B. Frey, Committee
*	*	*	*

The following is a statement (for the preceding year) of all sales, transfers or other disposition of assets; and of investments and changes in form of assets, and the name in which each stands:

Invested \$3000.00 of patent's money in the Prudential Bldg. and Loan Association, 1338 G St., N.W.; Total there now of \$3078.63.

The penalty of my undertaking is at present \$11,500.00

The original bond was filed on the 2nd. day of January, 1953, for \$1000.00

The surety is Royal Indemnity Co. and amount of bond at present is %11,500.

When the first undertaking was filed, the value of the estate was \$500.00.

I/We Ethelbert B. Frey, Committee, do swear that I/we have read the foregoing report signed by me/us and know the contents thereof, and that the facts therein stated are true.

/s/ Ethelbert B. Frey, Committee

Full address: 1319 F Street, N.W.

Subscribed and sworn to before me this 8th day of February, 1960.

HARRY M. HULL, Clerk

By: Robert C. Huey

Deputy Clerk

* * * * *

Seventh Account of Ethelbert B. Frey, Committee,
For period beginning January 30, 1959, and ending January 30, 1960

1959		Receipts	Disbursements
Jan.30/59	Balance cash on hand in First National Bank formerly 2nd Nat. Bk. at 1313 G St. N.W. Washington, D. C.	\$3261.52	
<u>1959</u>	(Deposits since above date)		
Feb.2,	Disability check for patient from United States government,	225.00	
March 2,	Disability check for patient from United States government	225.00	
April 1,	Disability check for patient from United States government	225.00	
May 4,	Disability check for patient from United States government	225.00	
June 3,	Disability check for patient from United States government	225.00	
July 8,	Disability check for patient from United States government	225.00	
August 3,	Disability check for patient from United States government	225.00	
Sept. 4,	Disability check for patient from United States government	225.00	
October 5,	Disability check for patient from United States government	225.00	
Oct. 21,	Deposited check heretofore drawn from the account of Prudential Bldg. Asso. for emergency purposes to Drs. Perritti and Teplin, who were psychiatrists in the criminal case #1308-52 & civil action #57-57. These doctors were finally located in California & Wisconsin; but did not use	2000.00	
October 29	Received check from Saint Elizabeths after Porter was sent to D.C. jail for trials, there was balance in his account at that time-----	187.31	
Amounts carried forward		\$7473.83	

		Receipts	Disbursements
Brought forward \$7473.83			
Nov. 3	Deposited disability check for patient from United States government	225.00	
Dec. 3,	Deposited disability check for patient from United States government	225.00	
<u>1960</u>			
Jan. 4,	Deposited disability check for patient from United States government	225.00	
(1959)	(Disbursements)		
Feb. 19,	Ck. #144, Fred J. Eden, auditor		\$ 40.00
Feb. 19,	Ck. #145, Ethelber B. Frey, committee		73.70
March 2,	Ck. #146, Jones, T.V. repair		27.70
March 3,	Ck. #147, as per order of court, deposited in Prudential Bldg. Asso., 1338 G St. N.W.		\$3000.00
Mar. 11,	Ck. #148, Adkins & Aniley, premium on bond		40.00
Apr. 23,	Ck. #149, National Shirt Shop, for Porter, as per letter		10.22
Apr. 23,	Ck. #150, Ralph S. Anthony Co., as per letter of April 18,		42.50
Apr. 27,	Ck. #151, to superintendent of Saint Elizabeths Hospital		100.00
May 11,	Ck. #152, Further premium on bond		10.00
June 2,	Ck. #153, Electric razor		15.00
June 2,	Ck. #154, For adding machine		60.00
July 23,	Ck. #155, Saint Elizabeths Hospital for necessities,		200.00
Oct. 5,	Ck. #156, Adkins & Aniley, premium from the bond		12.50
Oct. 15,	Ck. #157, E. B. Frey, committee, expenses in pending trials,		50.00
Amounts carried forward		\$8148.83	\$3671.62

		Receipts	Disbursements
Brought forward,		\$8148.83	\$3671.62
Oct. 19,	Ck. #158, For hauling Porter's things from hospital, when sent to District jail,		6.00
Oct. 22,	Ck. #159, Copland, Court Stenographer for record,		5.00
Oct. 28,	Ck. #160, Davis, Court stenographer		8.45
Oct. 28	Ck. #161, E. B. Frey, for expenses as per order of court last year, explained (separate sheet)		100.00
Nov. 4,	Ck. #162, Dr. Pearlman for eye glasses		30.00
Nov. 4,	Ck. #163, Adkins & Aniley for premium, bond.		10.00
Nov. 16,	Ck. #164 Repair Porter's watch		7.00
Nov. 17,	Ck. 165, Bill's T.V. (Repair Porter's T.V.		12.00
Dec. 15,	Ck. #166, O'Neil, court reporter,		27.30
Dec. 16,	Ck. #167, Superintendent Saint Elizabeths Hospital, after his return there,		100.00
Dec. 17,	Ck. #168, National Shirt Shop		19.85
Dec. 18,	Ck. #169, as per letter, Xmas presents, (Champayne and Whiskey)		50.00
Dec. 18,	Ck. #170, Cash for additional expenses, etc. as per order of court, separate sheet in detail,		50.00
1960.			
Jan. 11,	Ck. #171, Return of money heretofore drawn as explained, to Prudential Bldg. & Loan Asso.		\$2000.00
Total receipts and cash on hand at beginning of year		\$8148.83	\$6107.22
Amounts carried forward		\$8148.83	\$6107.22

	Receipts	Disbursements
Brought forward	\$8148.83	\$6107.22
Disbursements during year,	6107.22	
1960		
Jan. 30, Balance cash on hand in First National Bank formerly 2nd. Nat. Bank, 1313 G St., N.W.	\$2041.61	
Jan. 1959, Cash of monies in bank at beginning of year,	\$3261.52	
Deposits of monies receiving during yr. 1959,	4887.31	
Jan.30/60 Plus deposit in Columbia Federal Bldg. Asso.	5791.20	
Jan.30/60 Plus deposit in Prudential Bldg. Asso.	3078.63	
1959		
Money spent as per checks and receipts		\$6107.22
Jan.30/60 Cash on deposit, Columbia Federal Bldg. Asso.		5791.20
Jan.30/60 Cash on deposit, Prudential Bldg. Asso.		3078.63
Jan.30/60 Bal. cash on deposit at First National Bank (1313 G St., N.W.)		2041.61
	\$17,018.66	\$17,018.66
Committee requests 5% on the amount of \$1107.22, which is amt. above Bldg. & Loan Deposits		

District of Columbia, to wit:

I/we the undersigned, Ethelbert B. Frey, Committee, do solemnly swear that the foregoing account is just and true, and that I have bona fide paid, or secured to be paid, the several sums for which I claim credit and allowance.

/s/ Ethelbert B. Frey, Committee

Sworn to and subscribed before me this 8th day of February, A.D. 1960

HARRY M. HULL, Clerk
By /s/ Robert C. Huey
Deputy Clerk

[Filed March 17, 1960]

**MOTION FOR JUDGMENT OF CONDEMNATION AGAINST
CREDITS IN THE HANDS OF ETHELBERT B. FREY,
COMMITTEE**

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against the credits of the defendant, Harry Clifford Porter, in the hands of Ethelbert B. Frey, Committee, in an account in the name of Ethelbert B. Frey, Committee for Harry Clifford Porter, in the amount of \$11,136.44, as admitted by the answer of said Committee, filed herein on March 1, 1960, subject to the claim of said Committee in his answers to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for \$345 in overpayment of benefits.
2. An attorney's fee of \$2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees has been filed. The total amount attached is \$11,136.44. A motion to quash the attachment levied against the Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey

/s/ Dyer Justice Taylor

* * * * *

[Filed March 17, 1960]

**MOTION FOR JUDGMENT OF CONDEMNATION AGAINST
CREDITS IN THE HANDS OF PRUDENTIAL BUILDING
ASSOCIATION**

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against the credits of the defendant,

Harry Clifford Porter, in the hands of Prudential Building Association, garnishee, in an account in the name of Ethelbert B. Frey, Committee for Harry Clifford Forter, in the amount of \$3,078.63, as admitted by the answer of said garnishee, filed herein on March 1, 1960, subject to the claim of the Committee, Ethelbert B. Frey in his answers to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for \$345 in overpayment of benefits.
2. An attorney's fee of \$2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees has been filed. The total amount attached is \$11,136.44. A motion to quash the attachment levied against the Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey

/s/ Dyer Justice Taylor

* * * * *

[Filed March 17, 1960]

**MOTION FOR JUDGMENT OF CONDEMNATION AGAINST
CREDITS IN THE HANDS OF COLUMBIA FEDERAL
SAVINGS & LOAN ASSOCIATION**

The plaintiff by and through its attorneys moves the Court for an order for judgment of condemnation against the credits of the defendant, Harry Clifford Porter, in the hands of Columbia Federal Savings & Loan Association, garnishee, in an account in the name of Ethelbert B. Frey, Committee, Estate of Harry C. Porter, in the amount of \$5,791.20, as admitted by the answer of said garnishee, filed herein on March 1, 1960, subject to the claim of the Committee, Ethelbert B. Frey in his answers

to interrogatories that the following items constitute liens upon the fund:

1. Claim by the Veterans' Administration for \$345 in overpayment of benefits.
2. An attorney's fee of \$2,000 due the attorney for Harry Clifford Porter.

A motion for judgment of condemnation against the credits of the defendant in the hands of four garnishees has been filed. The total amount attached is \$11,136.44. A motion to quash the attachment levied against the Committee has been filed. An opposition to the motion has been filed by the plaintiff. Plaintiff requests that the motion to quash and the four motions for judgment of condemnation be consolidated for hearing.

LASKEY and LASKEY

By /s/ John L. Laskey

/s/ Dyer Justice Taylor

* * * * *

[Filed July 14, 1960]

Exhibit A

Law Offices of
LASKEY and LASKEY
Albee Building, 1426 G Street, N.W.
Washington, D. C.
Zone 5

June 7, 1960

The Honorable Luther W. Youngdahl
United States Courthouse
Constitution Ave. & John Marshall Place
Washington, D. C.

Re: Aetna v. Porter
C. A. No. 57-57

Dear Judge Youngdahl:

The purpose of this letter is to transmit additional information which we request that you consider in acting upon our motions for judgment of condemnation in the above-entitled case.

One of the savings and loan associations against whom we have moved for a judgment of condemnation is the Columbia Federal Savings and Loan Association, 730 11th Street, N. W. The enclosed material consisting of a letter and pamphlet from the Association, was unsolicited and apparently sent to all members of the legal profession of the District of Columbia. The material is self-explanatory and indicates that the Association considers that money placed with its Association is an "investment." It is our position, as set forth in our memorandum of points and authorities, that "investments" of veterans' benefits are not exempt from attachment.

Very truly yours,

LASKEY and LASKEY

By /s/ John L. Laskey

/s/ Dyer Justice Taylor

DJT/df

Encl.

cc: E. B. Frey, Esq.

[Filed July 14, 1960]

Exhibit B

COLUMBIA FEDERAL SAVINGS
AND LOAN ASSOCIATION

730 ELEVENTH STREET, N.W.
WASHINGTON 1, D.C.

May 27, 1960

Mr. Dyer J. Taylor
Albee Building
Washington 5, D. C.

Dear Mr. Taylor:

The local District Court rules relating to the investment of trust funds were amended on March 2, 1960 to permit investments up to \$10,000 each in twenty-four local insured savings and loan associations, or a total investment of \$240,000 for any one fiduciary account.

Rule 23, as amended by striking out a now discarded \$20,000 limitation, reads:

"Federal Savings and Loan Associations, Building and Loan Associations, and Savings and Loan Associations. Investment shares, certificates and deposit accounts in said institutions not exceeding \$10,000.00 in one institution, provided such institution is located and doing business in the District of Columbia and its accounts are insured by the Federal Savings and Loan Insurance Corporation under the provisions of Subchapter IV, Title 12 of the United States Code."

Columbia Federal Savings and Loan Association, with its four conveniently located offices, qualifies under the rule. Its current dividend rate is 4% per annum, compounded quarterly. Accounts may be opened and maintained by mail.

We hope you will place the enclosed folder, which contains all the forms necessary to open an account with us, in your files. A limited number of these folders is available should you wish another for an associate in your office.

We would welcome an opportunity to serve you.

Sincerely yours,

/s/ Joseph P. Burke, Jr.

Joseph P. Burke, Jr.
Vice President

Who May Have Accounts

Accounts may be held by the following:

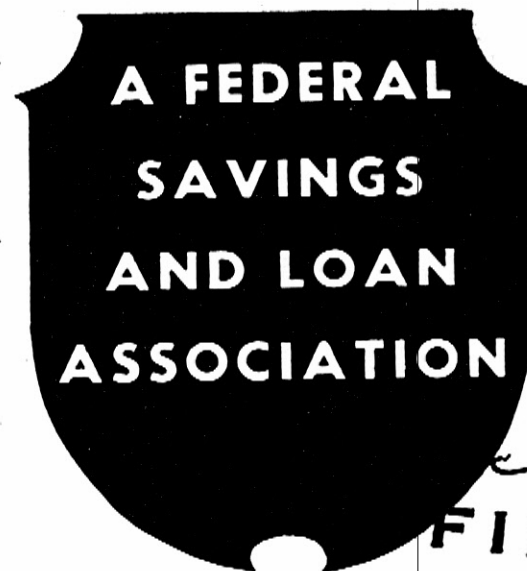
One person alone	A guardian or trustee, either a person or a corporation, for a minor or incompetent
Two persons, payable to either or survivor	
One person, as trustee for another	An executor or administrator
Two persons, as joint trustees for another	A corporation
One person, with power of attorney granted to another	A club, society, lodge, or association
	A partnership
	A credit union

We have a savings account for every purse and purpose.

YOU'LL LIKE THE FRIENDLY SERVICE YOU GET HERE

You're always a welcome visitor here. We want you to use these friendly quarters for every service we can render. Drop in whenever it's convenient and meet the neighborly people in our savings department. Or, if it's home financing advice you require, you'll find our mortgage loan advisers ready to talk over your problems in the light of present-day conditions. We've been your neighbors for a long time, and we'd like to know you even better!

HARRY M. HULL, CLERK



FILED

offering

JUL 14 1960

HARRY M. HULL, CLERK
An Insured Investment

for

**ADMINISTRATORS
EXECUTORS
FIDUCIARIES**

E. H. H. C.

**Columbia Federal Savings
AND LOAN ASSOCIATION**

730 ELEVENTH STREET, N. W.
1726 PENNSYLVANIA AVENUE, N. W.
5301 WISCONSIN AVENUE, N. W.
2826 ALABAMA AVENUE, S. E.

REpublic 7-7111

SAFEGUARDING YOUR SAVINGS

Safety of Savings Assured

(1) Our investments are limited by law to loans secured by first liens on real estate (almost all on homes and repayable monthly with a monthly reduction in the balance owed); to securities of the United States Government; to home improvement loans; and to stock in the Federal Home Loan Bank.

(2) By Act of Congress, each member's account is permanently insured against loss up to \$10,000 by the Federal Savings and Loan Insurance Corporation, an agency of the United States Government. Columbia Federal is Washington's First Insured Savings Association.

Earnings on Accounts

From interest earned by investments, and from interest paid by borrowers, the association pays expenses, sets aside reserves and distributes the net earnings quarterly to savers. Earnings are computed on a monthly basis—all funds received up to the tenth of any month earn from the first of that month if left to the end of the quarterly earnings period. Earnings may be credited to your account or paid by check, as you direct. Columbia Federal has never missed making a dividend payment since its founding in 1907. Our careful, conservative management has consistently maintained a policy of adding substantially to reserves—thus further assuring the stability of this Association.

No Fluctuation or Risk

Accounts here are non-assessable, and are always worth 100 cents on the dollar. There are no charges or fees made to establish or close your account at Columbia Federal.

Flexibility

Our savings plan is extremely flexible—accounts may be opened in any amounts and added to with any amount at any time. Additions and withdrawals are entered in a passbook, which you receive when you open your savings account here. Liberal earnings on your savings account are credited and compounded four times each year.

Withdrawal Privileges

To meet cash needs, we maintain substantial demand deposits in commercial banks and investments in readily-convertible United States Government Securities. A steady inflow of funds results from monthly payments on mortgage loans. To this is added a line of credit fixed for each association by the Federal Home Loan Bank of the association's district, with 50% of savings as the maximum. Since organization, it has been our policy and practice to pay withdrawals promptly on demand.

[Filed July 14, 1960]

MEMORANDUM

Plaintiff has a judgment against the defendant in the amount of \$16,459.72 and has issued attachments and moved for judgment of condemnation as to the following bank accounts which are in the name of the defendant's committee, Ethelbert B. Frey:

Prudential Building Association	\$3,078.63
Columbia Federal Building Association	5,791.20
First National Bank	2,266.61

The two building association accounts draw interest; the First National account is a checking account and draws no interest.

Defendant's committee asserts that these accounts result from the payment of veteran's benefits; 38 U.S.C. §3101 disallows execution on such benefits; and therefore defendant's motion to quash the attachments must be granted and plaintiff's motion for judgment of condemnation denied.

38 U.S.C. §3101 reads, in pertinent part:

"(a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. * * *

The question presented by this case is whether the exemption applies to these accounts or, whether the accounts are "property purchased in part or wholly out of such payments", rendering the exemption

unavailable.^{1/}

In Trotter v. Tennessee, 290 U.S. 354 (1933), the Supreme Court held that lands purchased with veterans' benefit payments were subject to taxation, the benefits having lost their exempt status when they were "converted into land and buildings". (290 U.S. at 356).

In Lawrence v. Shaw, 300 U.S. 245 (1937), the Court held that the deposit of veterans' benefits in a bank did not thereby render the funds non-exempt.

"These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof." (300 U.S. at 250)

Accordingly, it has been held in this Circuit that a checking account is exempt. Williams v. United States Fidelity & Guaranty Co., 71 App. D.C. 9, 107 F.2d 210 (1939). Is a savings account in a building association exempt?

In Carrier v. Bryant, 306 U.S. 545 (1939), the Supreme Court was asked to decide whether negotiable notes and United States bonds purchased with veteran's benefits by a veteran's guardian were exempt from execution on a judgment against the veteran.^{2/} The Court held

1. Plaintiff has also contended that the moneys in First National are commingled exempt and non-exempt funds. Whether the plaintiff will contend, after considering this opinion, that any of the funds are not exempt is unclear from the record. In any event, the identity of the funds can be ascertained from the committee's records and so, commingling, if it did occur--and it is not clear from the record that there were deposits of non-exempt funds, the \$2,000 transfer from Prudential clearly being exempt--would not serve to make the entire account amenable to execution. Appanoose County v. Henke, 207 Iowa 835, 223 N.W. 876 (1929); cf. Pentz v. First National Bank, 75 Pa. S.Ct. 1 (1920). Only those funds not given immunity by §3101 would be subject to execution. The motions now before the Court shall be disposed of without prejudice to a future determination, if counsel cannot agree, as to the true nature of the First National Account.

2. The statute there involved was §3 of the Act of August 12, 1935, c. 510, 49 Stat. 607, 609 which was not significantly different from 38 U.S.C. §3101.

the property subject to execution, quoting from the Lawrence case to the effect that

" 'The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the Government shows the intent to deny exemption to investments, as was ruled in the Trotter case.' " (306 U.S. at 550, quoting from 300 U.S. at 250) (emphasis supplied).

The plaintiff has seized upon this word "investment", pointed to Local Rule 23-II-a^{3/} and concluded that the defendant's funds are "investments" and therefore not exempt under 38 U.S.C. §3101.

But as Mr. Justice Holmes has instructed us:

"A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." Towne v. Eisner, 245 U.S. 418, 425 (1918)

And see International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926). Because our Local Rules speak of a deposit in a savings and loan association or a building association as an "investment" does not necessarily mean it is an "investment" in Lawrence v. Shaw terms and thus unexempt under 38 U.S.C. §3101. The inquiry, it seems to the Court, must go further. In re Bowen, 141 Ohio St. 602, 49 N.E. 2d 753 (1943), urged by the plaintiff, is therefore not persuasive.

3. "Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the Court, will ordinarily be sanctioned only when made in the obligations meeting the following requirements:

* * * * *

Section II-a. FEDERAL SAVINGS AND LOAN ASSOCIATIONS, BUILDING AND LOAN ASSOCIATIONS, AND SAVINGS AND LOAN ASSOCIATIONS. Investment shares, certificates and deposit accounts in said institutions not exceeding \$10,000.00 in one institution, * * *."

Section 3101 does not speak of "investment". The statute speaks of "any property purchased in part or wholly out of such payments". When Mr. Chief Justice Hughes used the word "investment" in Lawrence v. Shaw, quoted above, he was referring to the Trotter case. The only sentence in Trotter in which the word "investment" appears is the following:

"We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises."
(290 U.S. at 357).

Reading the word "investment" in the light of this statement is quite revealing: an immunity was not to extend to permanent investments. As further clarification, the Court said:

"* * * we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings." (290 U.S. at 356)
(emphasis supplied)

Moneys deposited in a building association by the committee of a veteran have not "lost the quality of moneys", they have not been "converted" into "property".^{4/}

Indeed, in Lawrence, bank deposits were held exempt from taxation and after stating that it would be possible "under a special agreement" for deposits to "assume the character of investments", the Court carefully pointed out "we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where

4. That a depositor in a savings and loan or building association may conceptually purchase "shares" in the association and thus be an "owner" rather than a creditor-depositor of the association is a matter of form, which, in the opinion of the Court, should have no bearing on the resolution of the problem here involved--just as the probability that a depositor in a checking account will not receive on demand the specific money deposited, but rather an equal sum of money in like kind, afforded no difficulty to the Court in Williams, supra. And see Elbert Sales Co. v. Granite City Bank, 192 S.E. 66 (1937).

it would otherwise attach." The important factor would appear to be not an overly legalistic conception of the nature of the bank accounts, but rather the ease with which "the proceeds of the collection are subject to draft upon demand for the veteran's use." (300 U.S. at 250). As a practical matter, a withdrawal from a savings account can be accomplished as quickly as a withdrawal from a checking account--and this is true whether the savings account is in a savings bank, savings and loan, or building association. A checking account is immune; a savings account, likewise, should be. Furthermore, the Congressional purpose to immunize veterans' benefits would indicate that a liberal construction should be given the statutory grant of immunity. See Mixon v. Mixon, 203 N.C. 566, 166 S.E. 516 (1932); Yake v. Yake, 170 Md. 75, 183 A. 555 (1936); cf. Hoeppel v. Westover, 79 F.Supp. 794 (D.C. Cal. 1948).

The plaintiff's motions will be denied with the exception that the amounts in the building association accounts representing interest, \$78.63 in Prudential and \$791.20 in Columbia, and the amounts in the First National attributable to non-exempt funds, if any, shall be condemned. The defendant's motion to quash the attachments is granted with the above limitations.

Counsel to submit order reflecting the above.

/s/ Luther W. Youngdahl
Judge

July 14, 1960

[Filed Sept. 13, 1960]

ORDER

The above cause came up for a hearing at this term of Court on an attachment, a motion to quash, and a motion for Condemnation.

That thereafter and after a hearing was had in open court by the attorneys of the respective parties on all three motions--

This court took the matter under consideration and from his opinion filed on July 14th., 1960 finds--

That the motion to quash the attachment be granted, with the exception of interest accrued on deposit with Columbia Building Association account to the amount of seven hundred ninety-one dollars and twenty cents, (\$791.21) and interest on deposit in the Prudential Building Association in the amount of seventy-eight dollars and sixty-three cents, (\$78.63) and any amount in the First National Bank attributable to non-exempt funds.

From information received by the court, there are no funds at present in the First National Bank,

THEREFORE, It is ordered this 13 day of Sept., 1960, that the motion to quash the attachment be granted and that the committee and attorney for the defendant, Harry Clifford Porter, is to turn over to the plaintiff, through his attorney of record, John Laskey, the total sum of eight hundred sixty-nine dollars and eight-three cents, (\$869.83).

It is ordered that the motion to quash the attachment is hereby granted with the above stipulation.

It is further ordered that the plaintiff may file as its exhibits herein, rules, regulations and withdrawal requirements of the garnishees, Columbia Building Association and Prudential Building Association.

/s/ Luther W. Youngdahl
Judge

/s/ Ethelbert B. Frey

Seen: John L. Laskey

A certified copy of this Order will be delivered to the Columbia Building Association, the Prudential Building Association and the First National Bank.

/s/ Luther W. Youngdahl
Judge

[Filed Nov. 1, 1960]

[Columbia Federal Savings
& Loan Association][Exhibits Filed Pursuant to
Court Order of 9/13/1960]

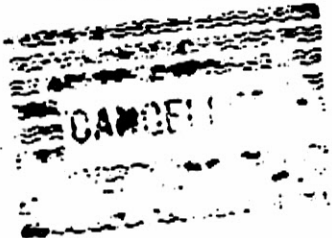
SAVINGS ACCOUNT

No.

This Certifies that

holds a Savings Account representing share interests in Columbia Federal Savings and Loan Association, subject to its charter and bylaws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America.

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION



INSURED PROTECTION for Your Savings

Safety of your Savings Account in Columbia Federal Savings is automatically insured up to \$10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government, created by Act of Congress, June 27, 1934.

The individual Savings Account of each member is insured up to \$10,000. Joint accounts and trustee accounts are similarly protected. A husband and wife can each have an account insured up to \$10,000 and a joint account insured up to \$10,000, thus a total of \$30,000 is insured.

SAVE AND BORROW WITH CONFIDENCE

IN



COLUMBIA FEDERAL SAVINGS



IMPORTANT

This book must be presented with every transaction.

Remittances may be made through the mail, by check or money order. All items credited in this book are subject to collection and final payment in cash.

Members should notify the Association of any change of address.

A Savings Account is provided for persons desiring to save a part of their regular income for future use. We suggest that a regular payment be made each month, although that is not required. Systematic Saving is the way to become successful and financially independent.

Dividends are declared and paid by the Association on June 30th and December 31st of each year. Dividends on Savings Accounts are computed on a monthly basis, and are compounded and added to each account semi-annually; earnings being allowed on each payment from the first of each month when made on or before the tenth of such month. Dividends are not allowed on withdrawals made between dividend dates.

es

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION WASHINGTON, D. C.

Washington's First Insured Savings Association

TRANSFER OF ACCOUNT

For value received the undersigned hereby sells, assigns and transfers to

.....
the account represented by the within certificate of
COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION
and does hereby irrevocably constitute and appoint the officers of said Association to transfer said account on the books of said Association.

This..... day of....., 19.....

Signature*.....

In the presence of.....

The undersigned is the transferee of the account represented by the within certificate and has executed application for the account and signature card.

Signature*.....

Transfer entered of record....., 19.....

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

By.....
*NOTE: Signature of any one co-tenant (with right of survivorship) is binding on the others.

Copyright 1934 Columbia Federal Savings Association

[The Prudential
Building Association]

Shares _____

No. _____

Address _____

_____ member of The Prudential Building Association, Washington, D. C.,
subject to the lawful provisions of its constitution and by-laws.

Date _____ 19 ____

ALWAYS BRING THIS BOOK WITH YOU
OR MAIL WITH PAYMENT.

IMPORTANT

This book must accompany all transactions.

Remittances may be made through the mail by check or money order.

All items credited in this book are subject to final collection of check or draft.

Members should notify the Association of any change of address. This will insure the delivery of Association reports and correspondence.

Keep this book smooth and clean. If lost, notify the Association immediately.

Safety of your Account in this Association is fully insured up to \$10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government.

THE PRUDENTIAL BUILDING ASSOCIATION

Washington, D. C.

Shares _____

Par Value \$50.00 per share

OPTIONAL SHARE CERTIFICATE

THIS CERTIFIES that _____

has _____ subscribed for and made the initial payment upon _____ Optional Shares of the undersigned. This certificate is issued, and by the acceptance hereof, is held subject to all the provisions of the laws of the District of Columbia, the Certificate of Incorporation and By-Laws of the undersigned, and is transferable on the books of the undersigned by the holder hereof in person, or by duly authorized attorney, upon surrender of this certificate properly endorsed. The undersigned may treat the holder of record hereof as the owner for all purposes without being affected by any notice to the contrary until this certificate is transferred on the books of the undersigned. Certificates will not be transferred unless and until the transferee has made proper application for and has been accepted as a member of the undersigned.

The holder hereof may make payments in such amounts and at such times as he may elect until, together with the dividends apportioned and credited hereto, the full par value of shares represented hereby shall have accumulated, whereupon the certificates shall become full paid and non-assessable and shall thereupon be exchangeable for a full-paid share certificate at the option of the holder hereof without cost.

The holder hereof is entitled to semi-annual apportionment and credit of dividends on the first days of January and July of each year as may be determined by the Board of Directors out of net profits, undivided profits or surplus of the undersigned, sharing equally with all shares issued by the undersigned, pro rata to paid-in value, including credited dividends, provided, however, that the Board of Directors in its discretion may pay or apportion and credit dividends upon shares of the association in connection with which a membership fee has heretofore been paid at a rate not exceeding one per cent greater than the rate of dividends apportioned and credited to shares of the association in connection with which no membership fee has heretofore been paid. The holder hereof is entitled to equal distribution of net assets with all other shares issued by the undersigned, pro rata to paid-in value, including credited dividends, in the event of voluntary or involuntary liquidation, dissolution or winding up of the undersigned.

The shares represented hereby may be withdrawn at any time upon thirty days' written notice to the undersigned of intention to withdraw; provided, however, that if such shares are pledged as security for an obligation to the undersigned the full amount of such withdrawal shall be first applied in payment of such obligation. Withdrawal applications shall be filed and paid in the order of their receipt, provided, that at no time shall the undersigned be required to apply in payment of withdrawal applications more than one-half of the funds in the treasury. Upon withdrawal the holder shall be entitled to receive the amount paid in, together with such dividends as shall have been declared thereon, less all fines due and a proportionate part of all losses and other charges incurred.

WITNESS, the seal of the undersigned and the signature of its duly authorized officer, this the _____ day of _____, 19____

THE PRUDENTIAL BUILDING ASSOCIATION



Authorized Signature



CHARTER AND BY-LAWS
OF
Columbia Federal Savings
AND LOAN ASSOCIATION

ESTABLISHED 1907



730 ELEVENTH STREET, N. W.

WASHINGTON 1, D. C.



MEMBER
FEDERAL HOME LOAN BANK SYSTEM
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

or decrease the number of directors of the association, shall be stated in writing and filed with the secretary of the association on or before thirty (30) days before the date of the annual meeting, and all business so stated, proposed and filed, shall be considered at the annual meeting, but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary thirty (30) days before the meeting such proposal shall be laid over for action at an adjourned, special or regular meeting of the members taking place thirty (30) days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

14. Voting by proxy. Voting at any annual or special meeting of the members may be made by proxy, it being provided that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the association, for verification, at least five (5) days prior to the date on which such meeting shall convene.

15. ~~Checks and notes receivable shall be obtained to pay a bonus for regular payments on savings accounts upon the bonus plan set forth in the rules and regulations made by the Home Loan Bank Board.~~

AT ANNUAL MEETING
JAN. 20, 1954

CHARTER N

1. Corporate title. The full corporate title of the Federal association hereby chartered is

Columbia Federal Savings and Loan Association

2. Office. The home office shall be located at Washington, in the District of Columbia.

3. Objects and powers. The objects of the association are to promote thrift by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes; and, in the accomplishment of such objects, it shall have perpetual succession and power: (1) to act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as he may prescribe, and shall perform all such reasonable duties as fiscal agent of the United States as he may require and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (2) To sue and be sued, complain and defend in any court of law or equity; (3) To have a corporate seal, affixed by imprint, facsimile or otherwise; (4) To appoint officers and agents as its business shall require, and allow them suitable compensation; (5) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and this charter; (6) To raise its capital, which shall be unlimited, by accepting payments on savings accounts representing share interests in the association; (7) To borrow money; (8) To lend and otherwise invest its funds; (9) To wind up and dissolve, merge, consolidate, convert, or reorganize; (10) To purchase, hold, and convey real and personal estate consistent with its objects, purposes, and powers; (11) To mortgage or lease any real and personal estate and take such property by gift, devise, or bequest; and (12) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers. It shall exercise its powers in conformity with all

(c) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause;

(d) To extend leniency and indulgence to borrowing members who are in distress and generally to compromise and settle any debts and claims;

(e) To limit payments on capital which may be accepted;

(f) To reject any application for savings accounts or membership; and

(g) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

8. **Execution of instruments, generally.** All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the association or any one of them and in such manner as from time to time may be determined by resolution of the board of directors. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the association whatsoever shall be signed by such officer or officers or such agent or agents of the association and in such manner as the board of directors may from time to time determine. Endorsements for deposit to the credit of the association in any of its duly authorized depositories shall be made in such manner as the board of directors may from time to time determine. Proxies to vote with respect to shares or accounts of other associations or stock of other corporations owned by or standing in the name of the association may be executed and delivered from time to time on behalf of the association by the president or a vice president and the secretary or an assistant secretary of the association or by any other person or persons thereunto authorized by the board of directors.

9. **Savings account certificates.** Such officers or employees as may be designated by the board of directors shall deliver to each person upon the initial payment on his savings account in the association an account book or other written evidence of such account.

10. **Seal.** The seal shall be two concentric circles between which shall be the name of the association. The year of

the next annual meeting of the members. Directors shall be elected for periods of 3 years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board of directors each year.

5. **Withdrawals.** The association shall have the right to pay the withdrawal value of its savings accounts at any time upon application therefor and to pay the holders thereof the withdrawal value thereof. Upon receipt of a written request from any holder of a savings account of the association for the withdrawal from such account of all or any part of the withdrawal value thereof, the association shall within 30 days pay the amount requested; Provided, That if the association is unable to pay all withdrawals requested at the end of 30 days from the date of such requests, it shall then pay all withdrawals requested in accordance with such methods and procedures as to amounts and allotments of funds for such purposes as shall be provided in regulations made by the Home Loan Bank Board in effect at the date of the request for withdrawal. Holders of savings accounts for which application for withdrawal has been made shall remain holders of savings accounts until paid and shall not become creditors.

7. **Redemption.** At any time sufficient funds are on hand, the association shall have the right to redeem, by lot or otherwise as the board of directors may determine, all or any part of any of its savings accounts on June 30 or December 31, by giving 30 days' notice of such redemption by registered mail addressed to the holder of each such savings account at his last address as recorded on the books of the association. The association may not redeem any of its savings accounts when there is an impairment of its capital or when it has any request for withdrawal which has been on file and unpaid for more than 30 days. The redemption price of each savings account redeemed shall be the full value thereof, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal amount of such savings account. If a savings account which is redeemed is entitled to participate in any reserve for bonus, the amount in such reserve for bonus which is properly allocable to such savings account shall be paid as part of the redemption price thereof. If any notice of redemption shall have been duly given, and if the funds necessary for such redemption shall have been set aside so as

association. Such notice shall state the name of the association, the place of the annual meeting and the time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such annual meeting shall convene. If any member, in person or by attorney thereunto authorized, shall waive, in writing, notice of any annual meeting of members, notice thereof need not be given to such member.

(b) Notice of each special meeting shall be either published once a week for the two consecutive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such special meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the home office of the association is located, or mailed postage prepaid at least 15 days and not more than 30 days prior to the date on which such special meeting shall convene to each of its members of record at his last address appearing on the books of the association. Such notice shall state the name of the association, the purpose or purposes for which the meeting is called, the place of the special meeting and the time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such special meeting shall convene. If any member, in person or by attorney thereunto authorized, shall waive, in writing, notice of any special meeting of members, notice thereof need not be given to such member.

4. Meetings of the board of directors. The board of directors shall meet regularly without notice at the home office of the association at least once each month at the hour and date fixed by resolution of the board of directors, provided that the place of meeting may be changed by the directors. Special meetings of the board of directors may be held at any place in the territory in which the association may make loans specified in a notice of such meeting and shall be called by the secretary upon the written request of the president, or of three directors. All special meetings shall be held upon at least 3 days' written notice to each director unless notice be waived in writing before or after such meeting. Such notice shall state the place, time, and purposes of such meeting. A majority of the directors shall constitute a quorum for the transaction of

the 6 months' period to be distributed promptly on its savings accounts, ratably, as declared by the board of directors, to the withdrawal value thereof; in lieu of or in addition to such net earnings, any of the association's surplus funds may be likewise distributed. Such net earnings shall be credited to savings accounts or paid, as directed by the owner. All holders of savings accounts shall participate at the same rate and on the same basis in the distribution of earnings: Provided, That the association is not required to distribute earnings on short-term savings accounts or on accounts of \$10 or less. Except as provided above, earnings shall be declared on all savings accounts of record at the close of each such 6 months' period, on the withdrawal value of each such account at the beginning of the said 6 months' period, plus the payments made thereon during such period (less amounts withdrawn, and, for purposes of participation in earnings, deducted from the latest previous payments), computed at the declared rate for the time invested, determined as provided below. The date of investment shall be the date of actual receipt of such payments by the association, unless the board of directors fixes a date, not later than the tenth of the month, for determining the date of investment of payments on savings accounts or designated classes thereof. Payments, affected by such determination date, received by the association on or before such determination date, shall receive earnings as if invested on the first of such month. Payments, affected by such determination date, received subsequent to such determination date, shall receive earnings as if invested on the first of the next succeeding month. Notwithstanding any other provision of its charter, the association may distribute net earnings on its savings accounts on such other basis and in accordance with such other terms and conditions as may from time to time be authorized by regulations made by the Home Loan Bank Board. All holders of savings accounts of the association shall be entitled to equal distribution of assets, pro rata to the value of their savings accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association.

11. Amendment of charter. No amendment, addition, alteration, change, or repeal of this charter shall be made unless such proposal is made by the board of directors of the association, and submitted to and approved by the Home Loan Bank Board, and is thereafter submitted to and approved by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective, if filed with and approved by the Home Loan Bank Board, as of the date of the final approval of, or as fixed by, the members.

Issued at Washington, D. C., this 17th day of October, 1949.

(Seal)

Home Loan Bank Board,

FILED
By: Wm. K. RIVERS
(Chairman)
NOV 1 1960

Attest:

J. FRANCIS MOORE **HARRY M. HULL, Clerk**
(Secretary)

Charter No. 1600

Original Federal Charter issued October 25, 1939.

BY-LAWS

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

1. Annual meetings of members. The annual meeting of the members of the association for the election of directors and for the transaction of any other business of the association shall be held at its home office at 2 o'clock in the afternoon on the third Wednesday in January of each year, if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday. The annual meeting may be held at such other time on such day or at such other place in the same community as the board of directors may determine. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year, and shall outline a program for the succeeding year. Annual meetings of the members shall be conducted in accordance with Roberts' Rules of Order.

2. Special meetings of members. Special meetings of the members of the association may be called at any time by the president or the board of directors, and shall be called by the president, a vice president, or the secretary upon the written request of members holding of record in the aggregate at least one-tenth of the capital of the association. Such written request shall state the purposes of the meeting and shall be delivered at the home office of the association addressed to the president. Special meetings of the members shall be conducted in accordance with Roberts' Rules of Order.

3. Notice of meeting of members. (a) Notice of each annual meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such annual meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the home office of the association is located, or mailed postage prepaid at least 15 days and not more than 30 days prior to the date on which such annual meetings shall convene to each of its members of record at his last address appearing on the books of the

to be and to continue to be available for that purpose, earnings upon such account shall cease to accrue from and after the date specified as the redemption date and all rights with respect to each such account shall forthwith, after such redemption date, terminate, except only the right of the holder of record of such savings account to receive the redemption price thereof without earnings.

8. **Loans and investments.** The association may make any loan or investment authorized by statute and the rules and regulations made by the Home Loan Bank Board and in effect on August 15, 1949. It may make such additional loans and investments as may thereafter be authorized by amendments of the said rules and regulations.

9. **Power to borrow.** The association may borrow money in an aggregate amount not exceeding one-half of its capital; the amount which may be borrowed from sources other than a Federal home loan bank shall not exceed one-tenth of such capital. Notwithstanding the foregoing limitations, the association may, with prior approval by the Home Loan Bank Board, borrow from a Federal home loan bank or from any Federal agency or instrumentality without limitation, upon such terms and conditions as may be required by such bank or agency. The association may pledge and otherwise encumber any of its assets to secure its debts.

10. **Reserves, surplus, and distribution of earnings.** The association shall maintain general reserves for the sole purpose of meeting losses; such reserves shall include the reserve required for insurance of accounts. Any losses may be charged against general reserves. If and whenever the general reserves of the association are not equal to at least 10 percent of its capital, it shall, as of June 30 and December 31 of each year, credit to such reserves an amount equivalent to at least 5 percent of its net earnings for the 6 months' period, or such amount as may be required by the Federal Savings and Loan Insurance Corporation, whichever is greater, until such reserves are equal to at least 10 percent of the association's capital. As of June 30 and December 31 of each year, after payment or provision for payment of all expenses, credits to general reserves and such credits to surplus as the board of directors may determine, and provision for bonus on savings accounts as authorized by regulations made by the Home Loan Bank Board, the board of directors of the association shall cause the remainder of the net earnings of the association for

business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors. All meetings of the board of directors shall be conducted in accordance with Roberts' Rules of Order.

5. **Officers, employees, and agents.** Annually at the meeting of the board of directors of the association next following the annual meeting of the members of the association, the board of directors shall elect a president, one or more vice presidents, a secretary, and a treasurer: Provided, That the offices of secretary and treasurer may be held by the same person, and a vice president may also be either the secretary or the treasurer. The board of directors may appoint such additional officers and such employees and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified; but any officer may be removed at any time by the board of directors. In the absence of designation from time to time of powers and duties by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

6. **Resignation of directors.** Any director may resign at any time by sending a written notice of such resignation to the office of the association delivered to the secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the secretary. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

7. **Powers of the board.** The board of directors shall have power—

(a) To appoint and remove by resolution the members of an executive committee, the members of which shall be directors, which committee shall have and exercise the powers of the board of directors between the meetings of the board of directors;

(b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof;

laws of the United States as they now are, or as they may hereafter be amended, and with all rules and regulations which are not in conflict with this charter now or hereafter made thereunder.

4. **Members.** All holders of the association's savings accounts and all borrowers therefrom are members. In the consideration of all questions requiring action by the members of the association, each holder of a savings account shall be permitted to cast one vote for each \$100, or fraction thereof, of the withdrawal value of his account. A borrowing member shall be permitted, as a borrower, to cast one vote, and to cast the number of votes to which he may be entitled as the holder of a savings account. No member, however, shall cast more than 50 votes. Voting may be by proxy. Any number of members present at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of members shall determine any question. The members who shall be entitled to vote at any meeting of the members shall be those owning savings accounts and borrowing members of record on the books of the association at the end of the calendar month next preceding the date of such meeting. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of the end of the calendar month next preceding the date of such meeting. Those who were members at the end of the calendar month next preceding the date of a meeting of members but who shall have ceased to be members prior to such meeting shall not be entitled to vote thereat. All savings accounts shall be nonassessable.

5. **Directors.** The association shall be under the direction of a board of directors of not less than 5 nor more than 15, as fixed in the association's bylaws or, in the absence of any such bylaw provision, as from time to time expressly determined by resolution of the association's members. Each director of the association shall be a member of the association, and a director shall cease to be a director when he ceases to be a member. Directors of the association shall be elected by its members by ballot: Provided, That in the event of a vacancy in the directorate, including vacancies created by an increase in the number of directors, the board of directors may fill such vacancy, if the members of the association fail so to do, by electing a director to serve until

incorporation, the word "incorporated," or an emblem may appear in the center.

11. **Amendment.** These bylaws may be amended at any time by a two-thirds affirmative vote of the board of directors, or by a vote of the members of the association. Each and every amendment shall be subject to the approval of the Home Loan Bank Board, and shall be ineffective until such approval shall be given: Provided, That, without the approval of the Home Loan Bank Board, section 1 of the bylaws may be amended so that the time of day for convening the annual meeting may be fixed at any hour not earlier than 10 a. m. or later than 9 p. m., and a section providing for a bonus may be added or repealed as provided in the rules and regulations for the Federal Savings and Loan System.

12. **Nominating committee.** The president, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three persons who are members of the association. Such committee shall make nominations for directors in writing, and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall forthwith be posted in a prominent place in the home office for the 15 days' period prior to the date of the annual meeting. Provided such committee is appointed and makes such nominations, no nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the association at least 10 days prior to the date of the annual meeting, which nominations shall forthwith be posted in a prominent place in the home office for the 10 days' period prior to the date of the annual meeting. Ballots bearing the names of all persons nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the president shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any member and shall be voted upon.

13. **New business.** Any new business to be taken up at the annual meeting, including any proposal to increase

NOTICE

IN ORDER THAT MEMBERS MAY CLEARLY UNDER-
STAND THEIR RIGHTS AND PRIVILEGES IN
THIS ASSOCIATION. IT IS RECOM-
MENDED THAT THE FOLLOWING
SECTIONS BE CAREFULLY
READ:

CHARTER

Section 4. Members.

Section 6. Withdrawals.

Section 10. Reserves, surplus and distri-
bution of earnings.

BY-LAWS

Section 1. Annual Meeting of Members.

INSURED PROTECTION

For Your Savings

Under an Act of Congress,
approved June 27, 1934, the full amount
of each Member's savings
in this Association
is automatically—

INSURANCE COVERAGE NOW \$10,000

**INSURED AGAINST LOSS
UP TO \$5,000**

by the Federal Savings and Loan
Insurance Corporation,
an instrumentality of the
United States Government.

[Filed September 15, 1960]

NOTICE OF APPEAL

Notice is hereby given this 15th day of September, 1960, that Aetna Casualty & Surety Company hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 13th day of September, 1960, in favor of Harry Clifford Porter against said Aetna Casualty and Surety Company.

/s/ John L. Laskey
Attorney for Plaintiff

* * * * *

[Filed Nov. 18, 1960]

APPELLANT'S STATEMENT OF THE PARTS OF RECORD
TO BE PRINTED IN JOINT APPENDIX

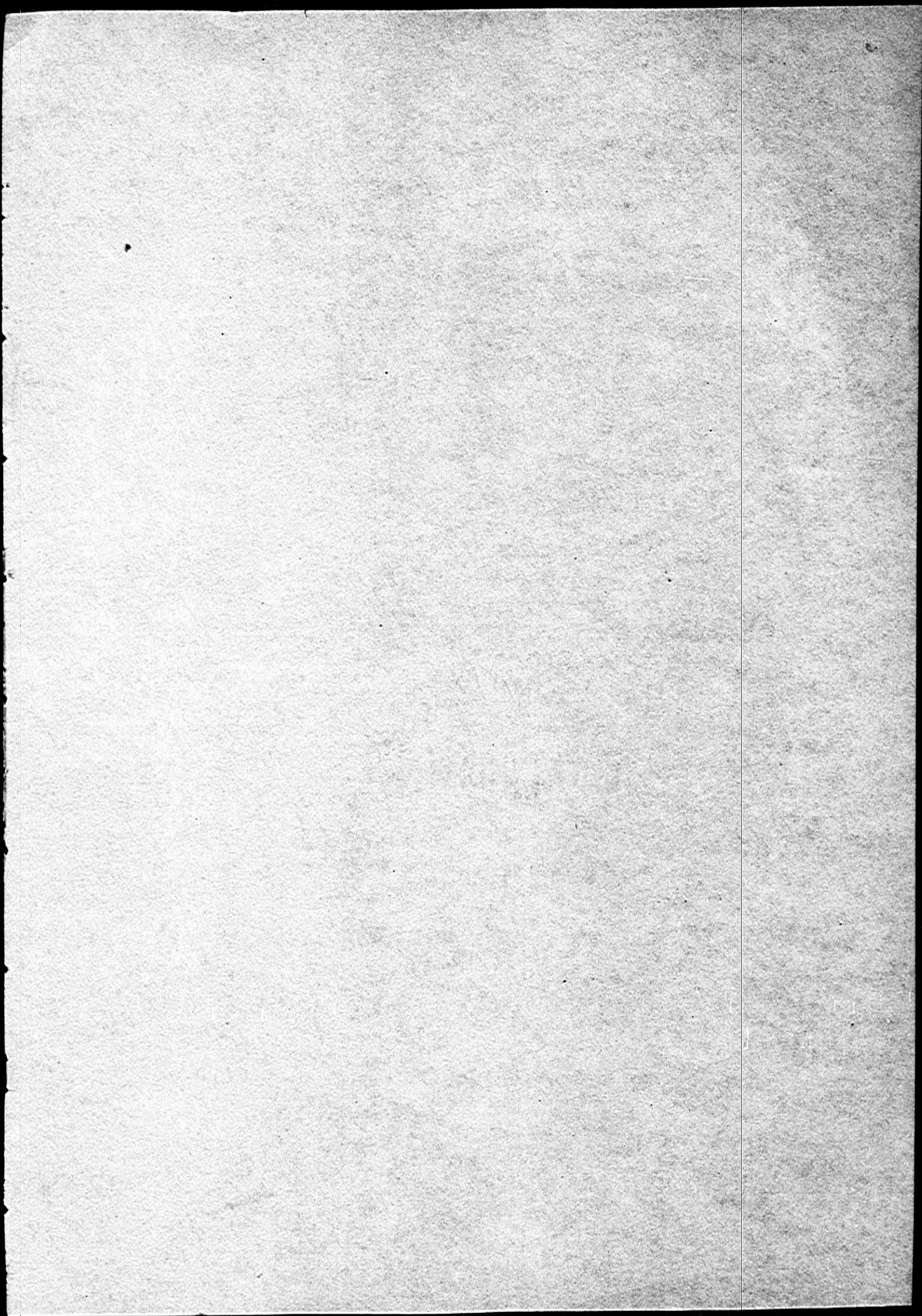
Appellant Aetna Casualty and Surety Company designates the following portions of the record herein to be printed in the Joint Appendix to appellant's brief:

1. The Judgment of February 8, 1960;
2. Attachment on Judgment and Interrogatories issued to Columbia Federal Savings and Loan Association on February 24, 1960;
3. Attachment on Judgment and Interrogatories issued to Ethelbert B. Frey, Esq. on February 24, 1960;
4. Attachment on Judgment and Interrogatories issued to Prudential Building Association on February 24, 1960;
5. Answer of Columbia Federal Savings and Loan Association to Attachment and to Interrogatories;
6. Answer of Prudential Building Association to Attachment and to Interrogatories;
7. Answer of Ethelbert B. Frey, Esq. to Attachment and to Interrogatories;
8. Motion to Quash Attachment by Ethelbert B. Frey, Esq. filed March 1, 1960;

9. Exhibit A to Opposition of Plaintiff to Motion to Quash Attachment filed March 11, 1960;
10. Motion for Judgment of Condemnation Against Credits in Hands of Ethelbert Frey, Esq.;
11. Motion for Judgment of Condemnation Against Credits in Hands of Prudential Building Association;
12. Motion for Judgment of Condemnation Against Credits in Hands of Columbia Federal Savings and Loan Association;
13. Letter of June 7, 1960, addressed to Judge Youngdahl by Laskey and Laskey, said letter being labeled Exhibit A, together with attachments marked Exhibits B and C;
14. Memorandum Opinion of Judge Youngdahl of July 14, 1960;
15. Order of September 13, 1960;
16. Exhibits filed pursuant to Order of September 13, 1960;
17. Notice of Appeal filed September 15, 1960;
18. This Statement.

LASKEY and LASKEY

By /s/ John L. Laskey
Attorney for Appellant



BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals

For the

District of Columbia Circuit

FILED

JAN 19 1961

No. 16,066

Joseph W. Stewart

CLERK

AETNA CASUALTY AND SURETY COMPANY,

Appellant,

v.

HARRY CLIFFORD PORTER,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ETHELBERT B. FREY

600 International Bldg.,
1319 "F" Street, N.W.
Washington, D. C.

Committee and Attorney
For Appellee

(i)

QUESTION PRESENTED

The sole question herein presented on this appeal is whether the lower Court erred in granting a motion to quash an attachment levied on the disability funds received (veteran's benefits) and deposited in a savings association, to wit: the Columbia Federal Savings and Loan Association and in the Prudential Building Association for Harry Clifford Porter, a World War veterans, through his committee, Ethelbert B. Frey by order of this Honorable Court.

Said Harry Clifford Porter being a patient at Saint Elizabeths Hospital. Who, because of the attachment, is without funds for his necessities of life.

Issue

The issue presented in this case is whether the pension funds of Harry Clifford Porter, an ex-service man, stationed at St. Elizabeths Hospital and deposited by his committee, with Columbia Federal Savings Association and in the Prudential Building & Loan Association, are exempt from attachment and exempt under United States Code, Article 38-3101 - page 125 and Section 454 or 454 A.

Are monies received as Federal Veterans' benefits restricted to the sole purpose of care, maintenance and rehabilitation of said veteran or are they attachable, when deposited in a bank or savings association, which can be withdrawn from said institutions the same as a bank account upon the presenting of the pass book?

Statute, Laws, Reports, etc.

The following citations cover source of various legislation, pertinent to the issue involved:

Act of August 12, 1935;
Act of October 17, 1940;
38 U.S.C. 454;
38 U.S.C. 454 A;
Senate Report 1072-74 Cong. 1st Session;
Senate Report 16-74 Cong. 1st Session.

(iii)

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 16,066

AETNA CASUALTY AND SURETY COMPANY,
Appellant,

v.

HARRY CLIFFORD PORTER,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

JURISDICTIONAL STATEMENT

This is an appeal taken by the Aetna Casualty and Surety Company from the United States District Court on the granting of a motion to quash an attachment of veteran's funds; said motion to quash being filed March 1, 1960 and granted thereafter July 14, 1960.

Jurisdictional statement agreed to.

COUNTERSTATEMENT OF FACTS

The material facts governing this case are not in dispute, other than the fact that all deposits of veterans' disability funds deposited in the Columbia Federal Savings Association and the Prudential Building Association were made after the committee for said appellee was appointed by this Honorable Court and placed therein afterwards by a further order of this Court; the deposits made therein was not an investment, but for the sole purpose of safeguarding and keeping it there to provide support and maintenance for the pensioned beneficiary, and more specifically as funds for his rehabilitation purposes: all of which funds appellee states are exempt from attachment under U.S.C. 38-454 and 454 A.

At present, appellee is not receiving any disability funds as under a recent order of the Veterans Administration, he having over \$500.00 in deposits, his pension or disability funds have been cut off completely; that because of the attachment filed herein, he has no funds whatsoever, even for the necessities of life at said hospital, where he is confined and for other personal necessities. That said money was placed in the association with the understanding that it could be withdrawn at any time on demand, "the same as a bank" upon presenting the pass book; that the pass books show no shares purchased, as will be shown by photostat copies of the entries in the pass books attached hereto and exhibited herein and marked "Appellee's Exhibits A-1, A-2, B-1, B-2 and made part of this brief, which shows only deposits. At no time was any of appellee's money invested in any shares of stock, but as an officer of the Court, it was from time to time placed as a deposit there, under an order of this Court.

Appellee states that as such, the said disability or pension fund itself and so deposited, is unattachable. Under United States Code, Article 38-3101, page 135 and Article 454 and 454 A, which states as follows:

Payments of benefits due or to become due under any law, administered by veteran administration, shall not be assignable except to the extent specifically authorized by the law and such payments made to or on account of an beneficiary, shall be exempt from taxation; shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process, whatsoever, before or after receipt by the beneficiary. (Act of Congress, August 12, 1935).

This law has not been changed or modified.

ARGUMENT

First: Appellee alleges that most of the cases cited by appellant in his Brief are wherein the pensioner or his widow purchased real estate, or stocks or bonds out of pension funds.

1. Funds payable under any Laws Relating to Veterans Are Clear - Exempt From Claims Of Creditors, and Shall Not Be Liable To Attachment. Levy or Seizure Or Under Any Legal or Equitable Process Whatever, Either Before or After Receipt By The Beneficiary.

At the outset it is important that we cite some of the general principles governing pension legislation. In the early case of In re Waite, D.C., Iowa 1897, 81 F.359, the Court said:

"It will not be questioned that the whole subject of the pensions paid to soldiers and sailors of the United States is a matter wholly within Federal Jurisdiction, and wholly outside the plan of State control. The State cannot, either by legislative enactment, or by judicial action, create or deny the right to a pension under the laws of the United States, nor direct, prescribe or control or the mode of obtaining pensions, (or its disposal unless used to purchase property). Real estate, stocks or bonds.

Williams v. U. S. Fidelity and Guaranty Company, 1939-107-Fed. 2d 210-71, App. D.C. and decided August 7, 1935.

Surplus v. Remale, 1949-87 N.Y.S. 2d 651-194 Misc. 1036.

Therefore, a State cannot, by legislation or judicial interpretation, alter or change pension legislation.

It is also clear that although no one has a vested right to a pension, these rights are vested as long as the statute creating the pension remains in force and unchanged, subject to be divested at any time that the legislature may desire. Rudolph v. United States, 1911, 36 App. D.C. 379.

It is also evident that Congress, if inclined, could enact legislation for the sole purpose of providing its intended beneficiaries with its exclusive use and to prevent others from ever benefiting from these specific funds. In the case of United States v. Moyers, et al., 15 Fed. Rep. 411, the Court, at page 417, in discussing the gratuitous nature of the pension, stated:

"Then it is not a right; it is a bounty; and if the government chooses to say that money shall go absolutely to the pensioner, irrespective of the claims of any creditor or anyone else, it has a right to say so; and there is no doubt that such is the policy of the legislation and that this is the State and Federal Courts, both of which have ruled these points just as I am ruling now."

The Supreme Court of the United States expressed similar sentiment, in the case of Walton, et al., v. Cotton, et al., 60 U.S. 355, 15 Law Ed. 658 (p. 359):

"There can be no doubt that Congress had a right to distribute this bounty at their pleasure, and to declare it should not be liable to the debts of the beneficiaries. But they will be presumed to have acted under the ordinary influences, which lead to an equitable and not to a capricious result. And where the language used may be so construed as to carry out a benefit policy, within the reasonable intent of Congress, it should be done."

The Act of August 12, 1935, supra, was called "An Act to safeguard the estate of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes."

Representative John E. Rankin of Mississippi in House Report 16 of the 74th Congress, 1st Session, stated, referring to this Bill, on the floor of the House, in introducing it, said it was:

"Nothing in the world except a measure to throw around the veterans, the safeguards, which I think every American would want thrown around the estate of insane veterans." (79 Cong. Rec. 8556 (June 3, 1935))."

Since Section 454 A, supra, amends Section 454 U.S.C.A., let us determine the object and effect of this amendment. Up to the amendment it appears that the exemption provision applied to all claims except those of the United States.

In the case of Ballinger v. United States, et rel Ness, 33 App. D.C. 308, the Court said:

"In legislation of this kind, requiring the performance of administrative duties by the head of a department to put it in execution, it is usual, as was done in the foregoing statute, to confer the power to make appropriate regulations for carrying the same into effect. Such supplementary regulations have all the force of law, if not in conflict with the law itself, or in plain excess of its requirements."

In United States v. Moore, 95, U.S. 760, 763, 24 L.Ed. 588, 589, the Court said:

"The construction of a statute by the department charged with its administration made and uniformly followed for a number of years, is always entitled to the most respectful consideration, and ought not to be overruled."

Following the same reasoning, the Court in United States v. Day, 27 App. D.C. 458 said:

Frizzell v. United States, 19 App. D.C. 48;

United States v. Moyers, 15 Fed. reports 411.

"A settled construction by a department of the government of laws of the United States will not be overturned by the Courts unless clearly wrong."

The Veterans Administration was especially created for or concerned in the administration of laws relating to the relief and other benefits provided by law for veterans, their dependents and their beneficiaries.

Consequently, great weight must be afforded the construction of the statute by the Veterans Administration. The Administrator of Veterans Affairs construed Section 454 A, supra, T 38, in Section 13, 339, Code of Federal Regulations of the United States of America as follows:

Section 13, 339(a), Section 3, Public No. 262, 74th Congress, (38 J.S.C. 454a) applies to payments made to or on account of a beneficiary under the laws relating to veterans and exempts such payments, either before or after receipt by the beneficiary, from the claims of creditors, and provides that same shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. The language of the Section has been construed by the Supreme Court of the United States to the effect that such exemption does not extend to property purchased such as real estate, stocks and bonds, in which the proceeds of such payments are or invested. (*Carrier v. Bryant*, 306 U.S. 545)

In De Ruiz v. De Ruiz, 66 App. D.C. 370, 88 F.2d 752 (1936) the Court said:

"While it is the duty of the Court in interpreting legislation to ascertain, if possible, the intent of the legislature, we must not overlook the general rule of statutory construction that such intent is to be found in the language employed."

In United States v. Goldenberg, 168 U.S. 95, 103, 18 S.Ct. 3, 42 L.Ed. 394, the Court said, when the words used are plain, they give meaning to the act, and it is neither the duty nor the privilege of the Courts to enter speculative fields in search of a different meaning. Appellee and committee contend that the language of Section 454 A, is plain and clear and not subject to speculative interpretation.

Another well established rule of statutory construction is that specific or special legislation, will prevail, when in conflict with general law, Simon v. Simon, 58 App. D.C. 158, 26 F.2d 530. A further extension of this general rule was laid down in Sanford v. Sanford, 52 App. D.C. 315, 286 F.777 wherein the Court ruled that general and specific provisions in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general.

Appellee holds that legislation, relative to pensions benefits of veterans, 38 U.S.C.A. 454 A, is special legislation, affecting a specific class of individuals.

The payment of pensions or disability funds are intended primarily for the maintenance, care, keep and rehabilitation of said pensioner thereafter; they cannot be attached by a judgment creditor.

The question presented by this case is whether the exemption applies to these accounts in the Columbia Federal Savings Association and/or the Prudential Building Association, where no shares were purchased, whether the accounts are "property" purchased in part or wholly out of such payments, rendering the exemption unavailable. In Trotter v. Tennessee, 290 U.S. 354 (1933), the Supreme Court held that lands purchased with veterans' benefit payments were subject to taxation, the benefits having lost their exempt status when they were "converted into land and buildings." (290 U.S. 356).

In Lawrence v. Shaw, 300 U.S. 245 (1937), the Court held that the deposit of veterans' benefits in a bank did not thereby render the funds non-exempt, as well as the following cases:

Ballard Estate, (1937) 293 N.Y.S. 31;

Atlantic v. Stokes, (1939) 165 - S.E. 27;

Yoke v. Yoke, (1936) 183 A.555 - 170 Md. 75;

U.S. Trust Co. of N. York v. Helvering, (1939) 59
Sct. 602 - 307 U.S. 59;

Heoppel v. Westover, (1948) 79 F.Supp. 794.

These payments are intended primarily for maintenance and support of the veterans. To that end, neither he nor his committee is obliged to keep the monies on his person or under his roof. (300 U.S. at 250).

Accordingly, it has been held in this Circuit that a checking account is exempt. Williams v. U.S. Fidelity and Guaranty Co., 71 App. D.C. 9 - 107 F.2d 210 (1939) likewise a savings account is exempt. But as Mr. Justice Holmes has instructed us:

"A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." Towne v. Eisner, 245 U.S. 418, 425 (1918).

Is money deposited in a savings account or in a building association the same as a bank account and which can be drawn out on demand with pass book exempt?

In Carrier v. Bryant, 307 U.S. 545 (1939), the Supreme Court was asked to decide whether negotiable notes and United States bonds purchased with veteran's benefits by a veteran's guardian were exempt from execution on a judgment against the veteran. The Court held the property subject to execution, quoting from the Lawrence case to the effect that:

"The provision of the Act of 1935 that the exemption should not apply to property purchased out of the moneys received from the government shows the intent to deny exemption to investments, as was ruled in the Trotter case." (306 U.S. at 550, quoting from 300 U.S. at 250) (emphasis supplied)

The plaintiff has seized upon this word "investment," pointed to Local Rule 23-11-a and concluded that the defendant purchased shares of stock in said institution which is emphatically denied, as his pass book only shows deposits, the same as a bank deposit.

The statute there involved was S3 of the Act of August 12, 1935, c.510, 49 Stat. 607 which was not significantly different from 38 U.S.C. S. 3101.

"Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under extraordinary conditions set forth fully to the Court, will ordinarily be sanctioned only when made in the obligations meeting the requirements herein set forth.

And see International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926). Because our local rules speak of a deposit in a savings and loan association or a building association as an "investment" does not necessarily mean it is an "investment." In Lawrence v. Shaw terms and thus unexempt under 38 U.S.C. 3101. The inquiry, it seems to the Appellee, must go further. In Re Bowen, 141 Ohio St., 602, 49 N.E. 2d 753 (1943) a State Court urged by the appellant, is therefore not persuasive at all.

Section 3101 does not speak of "investment." The statute speaks of any property purchased in part or wholly out of such payments. When Chief Justice Hughes used the word "investment" in Lawrence v. Shaw, quoted above, he was referring to the Trotter case. The only sentence in Trotter in which the word "investment" appears is the following: Money invested in real estate is not exempt. (290 U.S. 351).

We see no token of a purpose to extend a like ruling where money is deposited in a bank or building association as in the instant case.

Diligent inquiry has been made with both Building Associations in which the deposits were made and with other like Associations: all conclude and hold that such deposits are money or funds, and not purchase of stock.

Where Building and Loan Associations hold that such deposits are the purchase of "Shares," they still hold that such deposits are cash or money and not stock.

The local Inheritance Tax Bureau also holds and treats said deposits, upon the death of a decedent, as cash and/or money, and not stock and treat it as such. So does the Register of Wills Office of the District of Columbia.

Reading the word "investment" in the light of this statement is quite noticeable; an immunity was not to extend to permanent investments. As further clarification, the Court said:

" * * * we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and building." (290 U.S. at 356)
(emphasis supplied)

Moneys deposited in a building association by the committee by Order of Court of a veteran, have not "lost the quality of monies," they have not been "converted" into "property," as in this particular case; no stocks or shares were purchased, but only deposited for holding, as the books will show (copy of entry in books), Exhibits A-1, A-2 and B-1, B-2 and attached hereto.

Indeed, in Lawrence, bank deposits were held exempt from taxation and after stating that it would be possible "under a special agreement" for deposits to "assume the character of investments," the Court carefully pointed out "we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach." The important factor would appear to be not an overly legalistic conception of the nature of the bank accounts, but rather the case with which "the proceeds of the collection are subject to withdrawal; the same as in a bank account.

That a depositor in a savings and loan or building association does not necessarily purchase shares, but is a creditor-depositor of the association, is a matter of form, which, in the opinion of the appellee, should have no bearing on the resolution of the problem here involved — just as the probability that a deposit in a checking account will not

receive on demand the specific money deposited, but rather an equal sum of money in like kind, afforded no difficulty to the Court in Williams, supra. And see Elbert Sales Co. v. Granite City Bank, 192 S.E. 66 (1937).

It simply was a draft upon demand for the veterans' use. (300 U.S. at 250).

As a practical matter, a withdrawal from a savings account can be accomplished as quickly as a withdrawal from a checking account — and this is true whether the savings account is in a savings bank, savings and loan, or building association. A checking account is immune; a savings account likewise, should be. Furthermore, the Congressional purpose to immunize veterans' benefits would indicate that a liberal construction should be given the statutory grant of immunity. See Mixon v. Mixon, 203 N.D. 566, 166 S.E. 516 (1932); Yake v. Yake, 170 Md. 75, 183 A.555 (1936); cf. Hoeppel v. Westover, 79 F.Supp. 794 (D.C. Cal. 1948).

The following cases hold that money (veterans' funds) placed in bank are exempt.

William v. U.S. Fidelity and Warranty Co., 1939 - 107 F.2d 210-71 App. D.C.;

Bellair Estate, (1937) 293 N.Y.S. 31;

Atlantic v. Stokes, (1939) 165 - S.E. - 27;

In Re Guardianship Le Letournen Exemption good except to real estate and bonds.

Buxtons Estate, 1944, 16 - N.W., 2d 399 - 246 Wis. 97;

Lawrence v. Shaw, hereinbefore used, 300 U.S.

In a recent case of Arthur v. Kercoud, mental health case #35-57 and decided in December, 1959 by Judge Keech of our Court in which he held where pension funds were put or deposited in a building and loan association, it did not loose their identity and were exempt and unattachable under United States Code 38. And several of our other Courts have decided the same.

In Appancose County v. Henke, et al, 207 Iowa 835, the Court held that the co-mingling of pension money and interest thereon, did not loose their identity and did not stop the claim of exemption.

The purpose of the law and the Order of Court is to preserve the assets of the incompetent's estate, and at the same time, to receive some yield, thereby augmenting the assets from time to time, all in the interest of the incompetent so that when he is restored to normalcy mentally and discharged as such, he will have some estate to take care of himself during his rehabilitation in an orderly society and not become a charge upon the community.

This being true, it is inconceivable to believe that a Court would pass and enter such an order, knowing at the time that such an order is an instrumentality of personal benefit to a creditor of the incompetent if such funds on deposit in a banking institution are attachable.

Should a committee fail or refuse to obey the mandate of the Court, he would be subjecting himself in contempt of Court, removal and other possible consequences. If the committee knew that such deposits were attachable and placed the funds in a safety deposit box, he would be rendering a greater service to his ward than by obeying the Court's mandate as such funds would then be unattachable, but by so doing, he would, nevertheless, be subject to contempt and removal, even though under the circumstances, the committee would be rendering a fuller and greater service to his ward than would the Court.

From the above comment and the primary purpose of the law, heretofore cited, your committee cannot believe that the Court would hold that such funds, which have not changed or lost their identity, are attachable.

To hold otherwise, the purpose of the law and Order of Court would be defeated.

The Exhibits in this case and asked to be read herewith, are as follows:

PHOTOSTATS

Appellee's Exhibit A-1 and A-2 is the record of initial deposits in the Columbia Federal Savings and Loan Association.

Exhibit B-1 and B-2 is the record of initial deposits in the Prudential Building Association.

These Exhibits are attached hereto and follow this page.

Also attached hereto and asked to be read in connection with appellee's Brief are Exhibits marked C-1 and C-2, which are a letter from Winfred Overholser, M.D., Superintendent of Saint Elizabeths Hospital together with bill for care and treatment of Appellee Harry Clifford Porter.

EXHIBIT A-1

SAVINGS ACCOUNT

No. 31337

This Certifies that

Ethelbert B. Frey, Committee of the Estate
of Harry C. Porter

holds a Savings Account representing share interests in Columbia Federal Savings and Loan Association, subject to its charter and bylaws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America.

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

INSURED PROTECTION

for Your Savings

Safety of your Savings Account in Columbia Federal Savings is automatically insured up to \$10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government, created by Act of Congress, June 27, 1934.

The Individual Savings Account of each member is insured up to \$10,000. Joint accounts and trustee accounts are similarly protected. A husband and wife can each have an account insured up to \$10,000 and a joint account insured up to \$10,000, thus a total of \$30,000 is insured.

SAVE AND BORROW WITH CONFIDENCE

IN



COLUMBIA FEDERAL SAVINGS



EXHIBIT A-2

SAVINGS ACCOUNT			
No. 31337			
COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION			
WASHINGTON 1, D. C.			
DATE	PAYMENTS	WITHDRAWALS	BALANCE
MAY 11 55	3,000.00		3,000.00 CF
JAN 4 56	JUN 55 7.50		
JAN 4 56	DEC 55 45.11		3,052.61 CF
JAN 6 56	DIV 1,000.00		4,052.61 * CF
DEC 6 56	JUN 56 70.91		4,123.52 * CF
DEC 6 56	DIV 1,000.00		5,123.52 * CF
DEC 27 57	DEC 56 75.07		5,198.59 CF
DEC 27 57	JUN 57 90.97		5,289.56 CF
DEC 27 57	DIV 92.56		5,382.12 CF
JAN 8 59	DEC 57 94.19		5,476.31 CF
JAN 8 59	DIV 95.83		5,572.14 CF
JAN 8 59	DEC 58 95.83		5,572.14 CF
JAN 19 60	DIV 48.76		5,620.90 CF
JAN 19 60	DV159 56.20		5,677.10 CF
JAN 19 60	DV259 56.77		5,733.87 CF
JAN 19 60	DV359 57.33		5,791.20 CF
JAN 19 60	DV459		

EXHIBIT B-1

Shores _____	No. 18215
Ethelbert B. Frey	
Committee for Harry C. Porter	
600 International Building	
Address _____	1319 F Street, Northwest
Washington, D. C.	
_____ member of The Prudential Building Association, Washington, D. C., subject to the lawful provisions of its constitution and by-laws.	
Date <u>March 3</u> 19 <u>59</u>	
ALWAYS BRING THIS BOOK WITH YOU OR MAIL WITH PAYMENT.	
 <u>IMPORTANT</u> 	
This book must accompany all transactions.	
Remittances may be made through the mail by check or money order.	
All items credited in this book are subject to final collection of check or draft.	
Members should notify the Association of any change of address. This will insure the delivery of Association reports and correspondence.	
Keep this book smooth and clean. If lost, notify the Association immediately.	
Safety of your Account in this Association is fully insured up to \$10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government.	

No. 18215

DATE	PAYMENTS	WITHDRAWALS	BALANCE	Memo
MAR 3 59	3,000.00		3,000.00	P-
DV259	9.36		3,009.36	P-
DV359	28.21		3,037.57	P-
DV459	30.38		3,067.95	P-
OCT 21 59		2,000.00 -	1,067.95	P-
DV1760	10.68		1,078.63	P-
JAN 11 60	2,000.00		3,078.63	P-
DV260	30.79		3,109.42	P-
JUN 2 60		625.36 -	2,484.06	P-
DV3	24.84		2,508.90	P-
DV4	25.09		2,533.99	P-
NOV 28 60		162.50 -	2,371.49	P-

EXHIBIT C-1

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

SAINT ELIZABETHS HOSPITAL
WASHINGTON 20, D. C.

78,826

In reply refer to: FIN/JWH

ADDRESS ONLY

THE SUPERINTENDENT

SAINT ELIZABETHS HOSPITAL

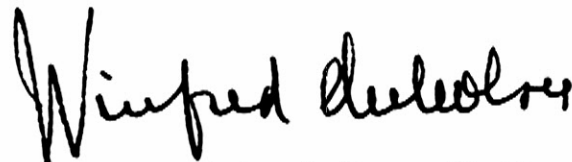
Re: Harry C. Porter
January 12, 1961

Mr. Ethelbert B. Frey, Esq.
Attorney and Counsellor at Law
600 International Building
1319 F Street, N. W.
Washington, D. C.

Dear Mr. Frey:

Enclosed is Bill for Collection, in the
amount of \$750.72, covering the cost of care and
treatment for your ward, Harry C. Porter, for the
period October 1, 1960 through December 31, 1960.
The total amount now due and unpaid is \$2,944.90.

Sincerely yours,



Winfred Overholser, M. D.
Superintendent

Enclosure - 1

EXHIBIT C-2

Standard Form No. 1114
9 GAO 1030
1114-103

BILL FOR COLLECTION
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SAINT ELIZABETHS HOSPITAL
(Department or Establishment and Bureau or Office)

Bill No. 288
Date 12-31-60

Washington, D. C.
(Address)

PAYER:

Ethelbert B. Frey, Comm.
600 International Building
1319 F Street, N. W.
Washington, D. C.

*This bill should be returned by the
payer with his remittance.*

SEE INSTRUCTIONS BELOW.

Date	DESCRIPTION	Quantity	Unit Price		Amount	
			Cost	Per		
	For cost of care and treatment furnished Harry C. Porter, #78,826, under the provisions of Public Law 313, 84th Congress, for the period October 1, 1960 thru December 31, 1960.	92	8.16	day	750	72
	Previously billed and unpaid				2,194	18
	MAKE CHECKS PAYABLE TO:- SAINT ELIZABETHS HOSPITAL					
753099	AMOUNT DUE THIS BILL,				\$ 2,944	90

This is not a receipt

INSTRUCTIONS

Tender of payment of the above bill may be made in cash, United States postal money order, express money order, bank draft, or check, to the office indicated. Such tender, when in any other form than cash, should be drawn to the order of the Department or Establishment and Bureau or Office indicated above.

Receipts will be issued in all cases where "cash" is received, and only upon request when remittance is in any other form. If tender of payment of this bill is other than cash or United States postal money order, the receipt shall not become an acquittance until such tender has been cleared and the amount received by the Department or Establishment and Bureau or Office indicated above.

Failure to receive a receipt for a cash payment should be promptly reported by the payer to the chief administrative officer of the bureau or agency mentioned above.

Finance Officer, Room 203, "A" Bldg.
 DEPARTMENT OF
 HEALTH, EDUCATION, AND WELFARE
 SAINT ELIZABETHS HOSPITAL
 WASHINGTON 20, D. C.
 OFFICIAL BUSINESS
 RETURN IN TEN DAYS

CERTIFIED MAIL



RETURN RECEIPT REQUESTED

CERTIFIED MAIL

PENALTY FOR PRIVATE USE TO,
 PAYMENT OF POSTAGE, \$30
 DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Ethelbert B. Frey, Esq.
 Attorney and Counsellor at Law
 600 International Building
 1319 F Street, N. W.
 Washington, D. C.

CERTIFIED MAIL

CONCLUSION

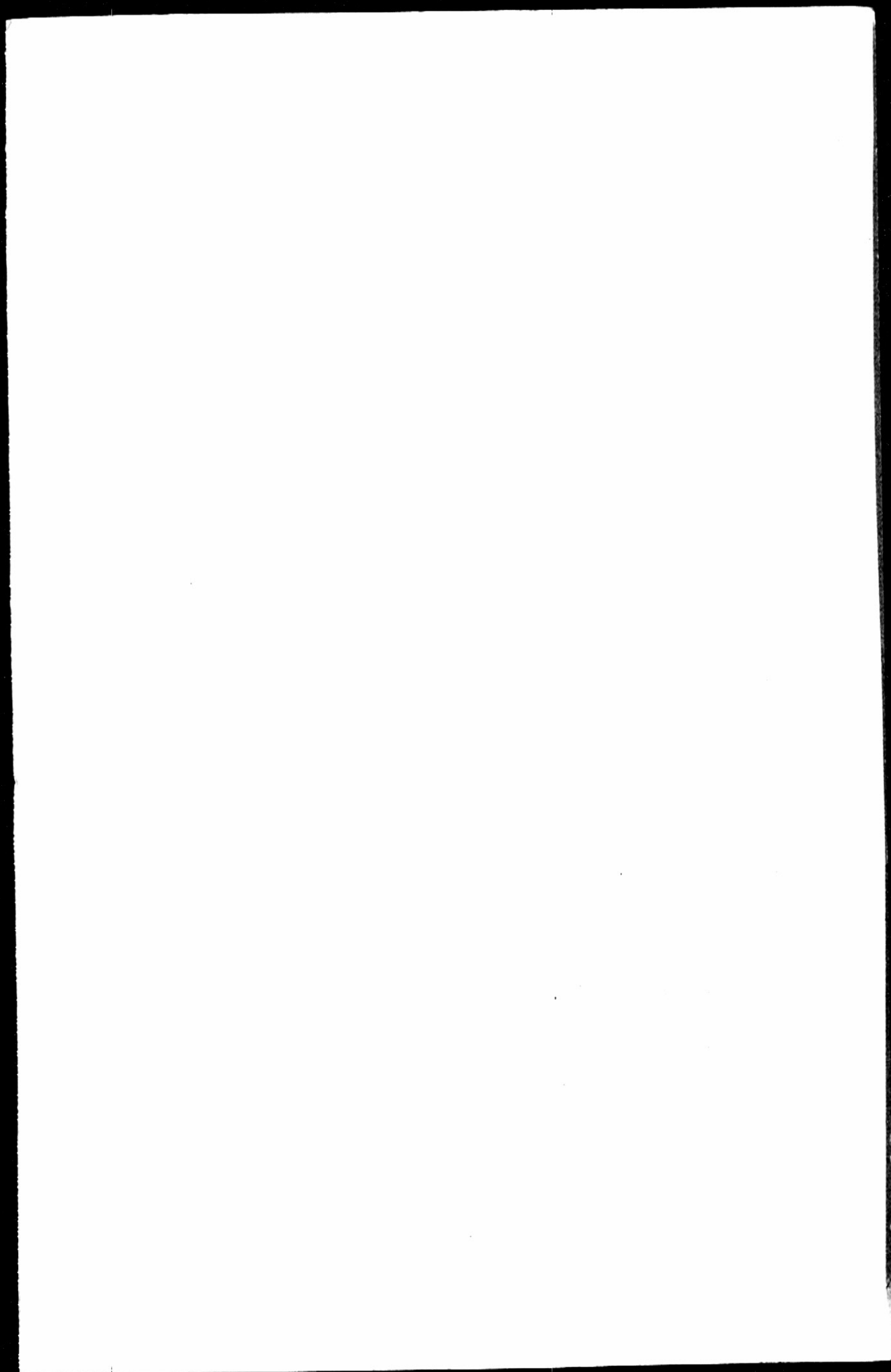
In light of the contention and arguments set forth herein, it is respectfully submitted that the Lower District Court did not commit error in granting the motion to quash the attachment on pension or disability funds so deposited by committee by Order of the Court in the Columbia Federal Savings and Loan Association and the Prudential Building Association, and that this Honorable Court will affirm the decision and Ruling of the Lower Court in the instant case.

Respectfully submitted,

ETHELBERT B. FREY

1319 "F" Street, N.W.
Washington, D. C.

Committee and Attorney
For Appellee



UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,066

AETNA CASUALTY AND SURETY COMPANY,

Appellant,

v.

HARRY CLIFFORD PORTER,

Appellee.

Appeal from the United States District Court
for the District of Columbia

**PETITION FOR REHEARING EN BANC
UNDER RULE 26**

Appellee, Harry Clifford Porter, an ex-service man stationed at Saint Elizabeths Hospital, through his committee and counsel, respectfully petitions this Honorable Court for a rehearing en banc of the appeal of this case decided July 13, 1961 and for reasons therefore states:

1. In its decision of July 13, 1961 this Court did not rule upon the fundamental and basic issues in the case, which are (a) whether the section of the United States Code, article 38-3101, page 125 and section 454 or 454A prevail in the matter of pension or disability funds which have not

changed their identity, and (b) whether such monies received by the veteran, through his committee, who was appointed by this Honorable Court and after receiving of certain sums, was further instructed by the Court to deposit from time to time in a savings account for the benefit of this veteran and his rehabilitation, took said monies out of the exemption clause of the United States Code, article 38-3101, pages 125 and sections 454 and 454A.

The Court erred when it held that money so deposited and which had never lost its identity, was attachable; this is contrary to all rulings of the United States Court for the District of Columbia. In Re case of Arthur (vs) Kercoud, mental health case # 35-57 and decided in December, 1959 by Judge Keech of the United States District Court for the District of Columbia. This same decision has been held in other cases by our Court and in many courts in other jurisdictions.

The Court erred in saying that the funds or money, so deposited was for stocks or shares in the savings associations. The record in the case will disprove that, as no shares were purchased as will be evidenced by the record of deposit books, exhibits A 1 and 2 and B 1 and 2. Photostats of original entries. They all hold, as well as the Probate Court of this jurisdiction, that should the depositor die, it would be treated as cash and not shares in said association.

The Court erred in holding that this particular case was in line with the cases cited in its opinion, McIntosh v. Aubrey, 185 U.S., Trotter v. Tennessee, 290 U.S., Lawrence v. Shaw, 300 U.S., and Carrier v. Bryant, 306 U.S., in which cases, so cited, in the opinion, real estate, notes and mortgages were purchased with pension or disability funds and in which cases your petitioner agrees that the said property, real estate or notes and mortgages, so purchased with disability funds, were not exempt from attachment and are not in line with this case.

The Court erred in holding that a savings association requires 30 days notice to withdraw money deposited therein; while there may be a rule for such in the associations, but no savings association in the District of Columbia requires any notice. It is a common rule and general practice, that one may deposit funds in an association, and the next day draw it out with the pass book, which is simplified banking.

The Court erred in going back and beyond the judgment and attachment, as the only matter to be decided was whether the United States Code, article 38-3101 and page 125, sections 454 or 454A is the controlling factor and the law covering veterans' pension or disability funds.

In order to reply to that part of the opinion which goes beyond the judgment and attachment, petitioner relates the following facts; at the time of the incident referred to in 1952 in the opinion of the court, Harry Clifford Porter was declared of unsound mind and the so called confession of that date, which was used against him (an insane person) was wholly inadmissible as evidence, and as such, his constitutional rights have been jeopardized, which have continued for nine years with no redress.

His disability funds received by his committee in mental health case #1714-52 were, by order of court, safely put away for his necessities, clothing, care and keep and for rehabilitation purposes, if and when he is released. That the monies, so deposited by order of Court, did not at any time lose its identity as disability funds.

Lastly, that the recent opinion of the Court of Appeals of July 13, 1961, which was dissented to by Judge Prettyman of said Court, raises grave doubts as to the liability of veterans' pensions and disability funds against creditors which will affect thousands of ex-service men throughout the United States.

For the foregoing reasons it is respectfully submitted that the Court in its discretion may appropriately order a rehearing en banc.

/s/ Ethelbert B. Frey
Committee & Attorney for Appellee

Certificate of Counsel

I hereby certify that the foregoing petition for a rehearing en banc is presented in good faith and not for delay.

/s/ Ethelbert B. Frey
Committee & Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition for rehearing en banc was mailed postage prepaid on July 26, 1961, to John L. Laskey, attorney for appellant, to the Albee Bldg., 15th and G Streets, N. W., Washington, D. C.

/s/ Ethelbert B. Frey
Committee & Attorney for Appellee

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,066

AETNA CASUALTY AND SURETY COMPANY,
Appellant,

v.

HARRY CLIFFORD PORTER,

Appellee.

United States Court of Appeals
For the
District of Columbia Circuit
FILED AUG 5 1961

Appeal from the United States District Court
for the District of Columbia

Joseph W. Starnick
CLERK

ANSWER TO PETITION FOR REHEARING EN BANC

For the convenience of the Court, the Appellant, Aetna Casualty and Surety Company, states herewith a short history of this litigation, which is as follows:

Some years ago, the Appellant issued a general liability policy to Gore Properties, Inc., a corporation engaged in the real estate business in the District of Columbia. Subsequently, the resident manager of one of the corporation's developments hired the Appellee, Harry Clifford Porter, a non-commissioned officer in the Air Force, to paint the interiors of certain apartment units in the development. Porter murdered one of the tenants, a young lady who lived alone. The serviceman's subsequent trial resulted in a verdict of not guilty by reason of insanity, and he was confined in St. Elizabeth's Hospital, where he still resides.

After the murder, the decedent's estate brought a wrongful death action against Appellant's insured. Trial resulted in directed verdicts in favor of the several Defendants. On appeal, this Court reversed and remanded. This is reported as Kendall, Administratrix, etc. v. Gore Properties, Inc., et al., 98 U.S. App. D.C. 378, 236 F.2d 673.

Subsequent to remand, the wrongful death action was settled, and Appellant paid the settlement amount. Thereafter, under the subrogation provisions of the policy, Appellant brought suit against Porter, on the theory of indemnity. Trial resulted in a judgment in favor of the Appellant. An appeal by Porter from this judgment was dismissed by this Court on October 11, 1960 as "frivolous."

Appellant issued attachments based upon its judgment against certain assets of the Appellee. These assets consisted of investment accounts in two federal savings and loan associations and a cash checking account in the First National Bank of Washington, all standing in the name of the Appellee's Committee, Ethelbert B. Frey, Esq. The District Court granted Appellee's motion to quash the attachments, except as to the interest increments attached to the two investment accounts. Appellant then appealed, as to the action of the lower Court in quashing the attachments laid against the corpus of the two investment accounts.¹ On July 13, 1961, this Court (per Miller, Chief Judge, with Burger, Circuit Judge, concurring, and Prettyman, Circuit Judge, dissenting) reversed the order of the lower Court and remanded the case with directions to deny the motion to quash and to grant Appellant's motion for judgment of condemnation against the share or investment accounts. Thereafter, Appellee filed the instant Petition for Rehearing En Banc.

The history of the Appellee's accumulations is quite simple. After Porter was adjudicated insane and confined in St. Elizabeth's, his Committee periodically received disability payments from the Veterans Administration. Customarily, the Committee deposited these payments in an ordinary checking account, i.e., an account earning no interest and subject to withdrawal on demand. From time to time, the Committee used some of these funds to pay bills incident to Porter's upkeep. Other sums, however, were deposited in share or investment accounts in the two savings institutions, pursuant to the provisions of District Court Rule 23, which specifically authorizes the "investment" of trust funds in "Federal Savings and Loan Associations,

¹ Appellant conceded, as the Court of Appeals noted, that the District Court was correct in quashing the attachment laid against the checking account in the First National Bank of Washington.

Building and Loan Associations and Savings and Loan Associations."

Under the rules of the associations, share or account books were issued to the Committee, the accounts earned interest payable at stated intervals, and the associations were not obligated to permit withdrawals on demand, but, rather, were only obliged to honor withdrawal requests within thirty days.

The question which the instant proceeding raised is wholly clear. It was phrased in Appellant's Brief as follows:

"When the Committee of an incompetent veteran uses disability benefits payable to the veteran for the purchase of shares in savings institutions specifically approved by the Courts for the 'investment' of trust funds, are the resulting share interests 'investments', in the legal sense, and, thus, not exempt from attachment by a judgment creditor of the incompetent?"

As Appellant contended, the law is similarly clear. The judicial history of the exemption statute (38 U.S.C. s. 3101(a))² has made it manifest that the "exemption" from creditors' claims of benefits payable to a veteran is not absolute, and was not designed to extend to investments purchased with the benefits by or on behalf of the veteran. Accordingly, as suggested, the sole question was whether the investment accounts in the two savings institutions legally constituted "investments."

After due consideration of the appropriate decisions of the Supreme Court, the Majority of this Court concluded that:

² The statute, in pertinent part, reads as follows:

"Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments.

"We think it clear that the committee's accounts in the federal savings and loan associations were investments subject to the claims of creditors."³

Appellant respectfully submits that this conclusion was necessarily predicated upon the controlling Supreme Court decisions. In McIntosh v. Aubrey, 185 U.S. 122, 46 L. ed. 834, 22 S.Ct. 561, and Trotter v. Tennessee, 290 U.S. 354, 78 L. ed. 358, 54 S.Ct. 138, the Court laid it down that the exemption does not extend to land purchased with the benefits. Moreover, in Carrier v. Bryant, 306 U.S. 545, 83 L. ed. 976, 59 S.Ct. 707, the Court further held that the exemption did not extend to negotiable notes or United States bonds so purchased. And it is vital to note that, with regard to cash in bank, while the Court held that cash on deposit in an ordinary checking account, bearing no interest and subject to withdrawal on demand, is exempt, it was also at pains to point out that cash on deposit could, under certain circumstances, "assume the character of investments." Lawrence v. Shaw, 300 U.S. 245, 81 L.ed. 623, 57 S.Ct. 443, 108 A.L.R. 1102.

The State Courts have not been hesitant in following the obvious thrust of the Supreme Court decisions. Representative cases are cited in Appellant's Brief; with a view to brevity, only the most recent will be noticed here. This is Hale v. Gravellese, 166 N.E. 2d 557, s.c., 162 N.E. 2d 817, 1960. There, the Supreme Judicial Court of Massachusetts

³ In Wisconsin Bankers Association, et al. v. Robertson, et al., decided on the same day as the instant proceeding, this Court (per Miller, Chief Judge, with Bazelon and Burder, Circuit Judges, concurring), said that: "We recently held that a 'share' in a federal savings and loan association is an investment and is not equivalent to the deposit of money in a bank. Aetna Casualty and Surety Co. v. Porter, No. 16,066, decided this date."

Textual comment, and other cases in accord with the view of the Majority at bar, will be found in American Law of Veterans, 2nd Ed., 1954, s. 43 et seq.

unanimously held that a veteran's funds deposited by his Committee in a savings account constituted an investment and were not exempt from the claims of a creditor.⁴

In concluding that a 'share' in a federal savings and loan association is an investment, and "is not equivalent to the deposit of money in a bank," the Majority of the Court in the instant appeal emphasized the several determinative distinctions between a depositor in a bank and a share owner in a savings institution. As the Majority pointed out, the investor in a share account is not entitled to his funds on demand, as is the bank depositor,⁵ and the investment depositor (unlike the depositor in an ordinary checking account) does not become a creditor of the bank.

In his Petition for Rehearing, the Appellee complains that the Majority of this Court "did not rule upon the fundamental and basic issues in the case," which, he says, is as to whether or not "funds which have not changed their identity" are exempt. The vice inherent in this accusation is, of course, that it completely ignores the dispositive finding of the Majority, i.e., that the funds in question, when changed from the form of cash in bank to investment shares in savings institutions, in legal fact changed their identity and, hence, lost the benefit of the exemption.

⁴ The question is one of first impression in this Circuit. Although this Court has previously held that cash on deposit in an ordinary checking account is exempt (*Williams v. United States Fidelity & Guaranty Co.*, 71 App. D.C. 9, 107 F. 2d 210, cf. *District of Columbia v. Reilly*, 102 U.S. App. D.C. 9, 249 F. 2d 524) which is, of course, the accepted rule as to accounts of this type, this Court had never had the instant problem actually before it for decision, prior to the present proceeding.

⁵ The Appellee insists, and the dissenting Judge noted, that as a matter of custom, investors in savings and loan associations in this area are permitted to make withdrawals on demand. Appellant submits, however, that what is ultimately controlling on this issue is not what may be done as a matter of custom or convenience, but, rather, what can be required and enforced as a matter of contractual right between the parties.

Moreover, the Appellee twice suggests that the purchase of the share accounts was "instructed by the Court" on "order of court." The record does not sustain this assertion. A study of the Appellee's Mental Health File (No. 1714-52) reveals that, upon several occasions, the Auditor recommended that "surplus" cash be transferred from the checking account to share accounts in the savings institutions, which the Committee did after pro forma approval of the Auditor's report by the Court. It also appears that, prior to Porter's trial on the murder charge, his counsel thought it advisable to obtain the in-court testimony of two psychiatrists who were no longer in this area, and for this purpose a substantial withdrawal from an investment account was authorized by the Court. As it turned out, the doctors were not brought into court to testify, and the funds were thereafter re-invested in the association. It is respectfully submitted that the contention that Appellee's Committee was "instructed" or "ordered" by the District Court to invest the funds in the savings institutions is not accurate and, in any event, is not germane to the issue here presented.

The dissent filed by Judge Prettyman does not, in matter of fact, differ with the Majority in their interpretation of the statute. The dissenting Judge would, rather, resolve the problem by a factual inquiry, via testimony from the Committee, as to how much of the assets on hand are actually needed for the upkeep of the veteran. Such amount would be declared to be "current deposits," *i.e.*, immune from seizure, while the residue would be denominated "investments" and available to a creditor. With utmost respect to Judge Prettyman, there would seem to be a fundamental difficulty inherent in this approach, it being apparent that there is no statutory authorization for such a procedure. The entire subject of veterans' benefits is, generically, one of legislative creation, and Appellant respectfully submits that any implementation or amplification of the Congressional mandate must be achieved by the legislature itself or, at the very least, through its delegate, the Administrator of Veterans Affairs, under proper authorization.

It is respectfully submitted that the Majority of this Court correctly interpreted the exemption statute and the

controlling decisions of the Supreme Court construing it,
and that the Petition for Rehearing En Banc should be denied.

Respectfully submitted,

JOHN L. LASKEY

RICHARD WHITTINGTON WHITLOCK

509 Albee Building
Washington 5, D. C.

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to
Petition for Rehearing En Banc was mailed, postage prepaid,
this 4th day of August, 1961, to Ethelbert B. Frey, Esq.,
1319 F Street, N. W., Washington, D. C., attorney for
appellee.

JOHN L. LASKEY